

Following A Madhhab Innovation or Obligation?

A Collection of Articles by

Mufti Muhammed Taqi Usmani

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The Issue of Taqlid and Adopting a Madhhab¹

Written² by Mufti Muhammed Taqi Usmani

Translated by Zameelur Rahman

People would seek fatwa from ‘ulama’ since the earliest of times in matters which they were in need of, because the majority of people are not able to derive the rulings of the Shari‘ah from their original sources. Thus, it would be necessary for them to refer to those who have knowledge of these rulings. This is what Allah (Glorified and Exalted is He) ordered in His noble saying: “So ask the people of remembrance if you do not know.” (16:43) And as long as a mufti is trusted in his knowledge and his piety, they would not demand evidence for what he said – and this is the technical meaning of taqlid, since they defined it as: “Acting on the opinion of another without knowing his evidence or demanding proof.”

However, in the best of generations, they would not restrict themselves to taking fatwa from a single scholar, such that they would not permit seeking fatwa from another scholar, although when individuals had a particular affinity with a scholar of a certain land, their reliance on him would be greater than others, so by virtue of that affinity, they would refer to that scholar in all matters or most of them.

Of this is what al-Bukhari transmitted from ‘Ikrimah that the people of Madinah would ask Ibn ‘Abbas: “Is it permissible for a woman [that is a pilgrim], when she is menstruating, to set off for her hometown after the Tawaf al-Ziyarah and omit the Tawaf al-Wida’?” Ibn ‘Abbas answered them by [saying] that it is permissible for her to set off and omit the Tawaf al-Wida’. They said to him: “We will not adopt your opinion, and leave the opinion of Zayd.” In the transmission of al-Isma‘ili: “We do not care, whether you have issued us a fatwa or you have not issued us a fatwa. Zayd ibn Thabit says: ‘She does not set off.’” In the transmission of al-Tayalisi: “We will not follow you, Ibn ‘Abbas, when you oppose Zayd.” This is because they had greater confidence in Zayd ibn Thabit. Later, Zayd ibn Thabit retracted from his opinion when he came to know of the hadith of Safiyyah, as transmitted by Muslim from Tawus: “I was with Ibn ‘Abbas when Zayd ibn Thabit said to him: ‘You issue fatwa that a menstruating woman departs before having her final meeting with the House?’ Ibn ‘Abbas said: ‘At the least, ask so-and-so Ansari woman: Did the Prophet (Allah bless him and grant him peace) command her?’” He said: “Subsequently, Zayd ibn Thabit returned to Ibn ‘Abbas, laughing, and saying: ‘I do not believe but that you told the truth!’” When Zayd ibn Thabit (Allah be pleased with him) retracted, the people of Madinah were content that it is permissible for her to set off [before performing the Tawaf al-Wida’].

And of this is what Imam Ahmad ibn Hanbal (Allah – Exalted is He – have mercy on him) transmitted from Abu Muslim al-Khawlani (Allah – Exalted is He – have mercy on him), he said: “I came to the mosque of the Damascenes, when there was a circle therein comprising of senior companions of the Prophet (Allah bless him and grant him peace), and there was a youth amongst them with kohl on his eyes and bright teeth. Whenever they differed in anything, they referred it to the young man, a youthful young man.” He said: “I asked a sitting-companion of mine: ‘Who is this?’ He said: ‘This is Mu‘adh ibn Jabal.’” And in another narration: “Whenever they differed over anything, they referred it to him and they departed on his opinion.”

Examples of this are many.

The upshot is that most people would refer to those they trusted, and they would prefer his fatwas over the fatwas of others. There were some who did not suffice with seeking fatwa from a single scholar, because the madhhab was not codified in that time, so they did not believe it was forbidden to seek fatwa from anyone that was accessible to them, even if it was someone besides whom they normally referred to. There was no fear at that time that

1 Taken from <https://www.deoband.org/2012/07/general/taqlid-and-ijtihad/the-issue-of-taqlid-and-adopting-a-madhhab/>

2 Usul al-Ifta’ wa Adabuh, Mufti Muhammad Taqi Usmani, pp 61 – 84

people would select from the different madhhabs that which accorded with their passions because it was difficult for the questioner to know the opinion of the one he is seeking fatwa from before he asked him, which was because the madhhabs were not yet codified.

But after the codification of the four madhhabs of jurisprudence with a specific structure, and books were compiled on them, and they condensed into schools which were dedicated to studying them, and the opinions of these madhhabs became well-known and familiar to the people, if it was permitted for everyone to select from these opinions whatever he wished whenever he wished, that would lead to following desires and not following the bright Shari'ah. There is no doubt that each of these jurists only selected an opinion on the basis of the strength of its evidence according to him not on the basis of what his heart desired, so it would be possible for another mujtahid to select or reject what he said due to a stronger evidence that appeared to him from the sources of Islamic legislation. However, the layperson who is not able to compare between these opinions on the basis of the evidences of the Shari'ah, if he was given the option to adopt what he wished and reject whatever he wished, it would be feared for him that he will adopt from these opinions that which accords with his desires, and not because of the proof of the Shari'ah that was the basis of that opinion.

Furthermore, each one of these madhhabs has a specific structure under the remit of which it operates, whereby many of its rulings are linked to each other. Thus, if one ruling from it is adopted and another ruling that is linked to it is omitted, the structure would collapse, and a situation of talfiq (mixing opinions from different madhhabs on a single issue) – not taken as valid by anyone – may arise. It is difficult for a layperson to appreciate these subtleties, so if the door of selecting was to be opened for the layperson, that would lead to chaos in the laws of the bright Shari'ah. It was for this [reason] that a need arose to adopt a specific madhhab, not because the follower of a particular madhhab believes his Imam is an intrinsic authority – protection is from Allah, the Glorious! – but, because he trusts his knowledge in the Shari'ah and its proofs more than others, or because knowledge of his madhhab is easier for him with respect to the founders of the other madhhabs. By such adoption of madhhabs, the circumstances of the people – in terms of faithfulness to the Shari'ah and not following haphazard whims therein – were regulated, because selecting from the opinions of the jurists based on whim and not on the basis of evidence is from that which the scholars, both ancient and recent, have condemned. Imam Ma'mar ibn Rashid (Allah – Exalted is He – have mercy on him) said: “If a man was to adopt the opinion of the people of Madinah on listening to songs and approaching women from their behinds, and the opinion of the people of Makkah on temporary marriage and barter, and the opinion of the people of Kufah on intoxicating substances, he would be from the worst of the slaves of Allah.” (Talkhis al-Habir, 3:187)

Hafiz Ibn Taymiyyah (Allah – Exalted is He – have mercy on him) said: “An example of this is that a man believes in the validity of the pre-emption³ of a neighbour when he demands it, and its invalidity when he is the buyer, because this is not permissible by consensus; and likewise, one who assumes the validity of the guardianship of a sinner in the process of his marriage and assumes the invalidity of his guardianship in the process of his divorce – this is not permissible by consensus of the Muslims. If a particular questioner said: ‘I was not aware of that, and from today I am adhering to this,’ that would not be [accepted] from him because it would open the door to playing with the religion and open the means to legalisation and illegalisation being according to whims.” (Majmu' al-Fatawa li Bni Taymiyyah, 32:101)

Imam al-Nawawi (Allah – Exalted is He – have mercy on him) said: “Its reason is that if it were permissible to adhere to any madhhab one wished, it would lead to collecting the concessions of the madhhabs, in accordance with one's desires, and opting between legalisation and illegalisation, obligation and permission, and this will lead to relinquishing the noose of moral responsibility (taklif); as distinguished from the early period, because [at that time] there were no refined madhhabs that encompassed the rulings of [all] outcomes. Based on this, it is necessary for

3 “Pre-emption” (shuf'ah) refers to the right of a partner with a share in a property or a neighbour to cancel a purchase made on the property to a third party so he can have the first choice to buy it. There is disagreement whether a neighbour enjoys this right, although it is agreed that a partner with a share in the property does.

him to make effort in opting for one madhhab he will adhere to specifically.” (al-Majmu‘ Sharh al-Muhadhdhab, 1:55)

Ibn Khaldun (Allah – Exalted is He – have mercy on him) said: “Taqlid in all towns came to rest on these four, and muqallids of other than them have disappeared. The people blocked the door of disagreement and its paths when the diversification of the technical terms of the sciences became extensive; and when it became difficult to reach the level of ijtiḥad; and when it was feared that [somebody] unqualified for it whose opinion and religion are not trusted would be ascribed to it; so they [i.e. scholars] made [their] incapacity and deficiency clear, and they directed people to taqlid of these [four], to all who are specialised therein from the muqallids, and they forbade modification of their taqlid because it would imply frivolity. All that remained after authentication of the basic texts and connecting their chains by narration is transmission of their madhhabs, and each muqallid acting on the madhhab of the one he does taqlid of from them. There is no meaning to jurisprudence today besides this. And the claim of ijtiḥad in this age is rejected and turned on its heel, and his taqlid is abandoned. The people of Islam have evolved into taqlid of these four Imams.” (Muqaddimah Ibn Khaldun, p. 430)

Shaykh Wali Allah al-Dihlawi (Allah – Exalted is He – have mercy on him) said: “Know that the people in the first and second centuries were not united on taqlid of one specified madhhab, and after the second century, there appeared amongst them adherence to the madhhabs of specific mujtahids, and those who did not rely on the madhhab of a specific mujtahid became few – and this was the obligation of that time. If you say: How is it that one thing is not obligatory at one time, but obligatory at another time, although the Shari‘ah is one? I say: The original obligation is that there are those in the ummah who are aware of the corollary rulings from their detailed evidences. The people of truth are united on this. And the prelude to an obligation is obligatory. When there are many avenues to that obligation, it is necessary to acquire any avenue from those avenues without particularisation, but when one avenue becomes specified, that one avenue itself becomes obligatory...Based on this, it should be that the result is the obligation of taqlid of a specific imam.” (al-Insaf fi Bayan Asbab al-Ikhtilaf, p. 68, 70)

He said at another place: “Indeed these four codified and refined madhhabs have united the ummah, or those who are noteworthy from them, on the permissibility of taqlid of them, to this day of ours. In this are interests that are not hidden, especially in these days in which aspirations are very shunted and souls are given to desire and every holder of an opinion is impressed by his own opinion.”

Although the mujtahid jurists were widespread in every region of the Muslim regions, it was the will of Allah (Exalted is He) that no madhhab would be codified with a total composition in the way the madhhabs of the four jurists were codified, and their affiliation to them was mass-transmitted, and their pupils who studied them and examined them and drew corollaries from them overflowed. Such a thing did not happen to the other madhhabs. Shaykh Wali Allah al-Dihlawi (Allah – Exalted is He – have mercy on him) said: “In sum, adopting the madhhab of the mujtahids is a secret that Allah (Exalted is He) inspired to the ‘ulama’, and He united them upon it, whether consciously [on their part] or unconsciously.” (al-Insaf, p. 73)

This is why the ‘ulama’ said that it is obligatory for the non-mujtahid to do taqlid of one of these four madhhabs, and not do taqlid of a madhhab besides them.

Imam al-Nawawi (Allah – Exalted is He – have mercy on him) said: “He does not have the option of adopting the madhhab of any of the imams of the Sahabah (Allah be pleased with them) and other than them from the early ones, although they were more learned and of a higher rank than those after them, because they did not devote themselves to codifying knowledge, and delineating its principles and its branches, as none of them have a refined, codified and approved madhhab. Only those who came after them took up this [task] from the Imams affiliated with the madhhabs of the Sahabah and the Tabi‘in, who began to lay out the laws of outcomes before their occurrence, and who set out to elucidate their principles and their branches, like Malik, Abu Hanifah, and others.” (al-Majmu‘ Sharh al-Muhadhdhab, 1:55)

Al-Munawi transmitted from Hafiz al-Dhahabi (Allah – Exalted is He – have mercy on them) that he said: “It is necessary for us to believe that the four Imams, the two Sufyans, al-Awza‘i, Dawud al-Zahiri, Ishaq ibn Rahwayh, and all the Imams, were upon guidance, and no attention is paid to those who speak against them with what they are free from. The truth in accordance with the majority is that the one who is right in the corollaries is one, and Allah (Exalted is He) has a sign in what He has decreed, and that the mujtahid is given the responsibility of finding it, and that the one who misses it is not sinful, but is rewarded. Thus, the one who is right has two rewards, and the one who errs has one reward. Yes, if the mujtahid is deficient [in his knowledge], he is sinful, by agreement, and [it is necessary] for the non-mujtahid to do taqlid of a specific madhhab...but it is not permissible to do taqlid of the Sahabah and likewise the Tabi‘in, as stated by Imam al-Haramayn, of all whose madhhab has not been codified, so taqlid of other than the four [Imams] in judicial decree and fatwa is prohibited, because the four madhhabs have spread and have been codified, such that the conditions of their absolutes and the specifications of their generalities are clear; as distinguished from [madhhabs] besides them due to the extinction of their followers. Imam al-Razi (Allah – Exalted is He – have mercy on him) transmitted consensus of the verifiers on the prohibition of laypeople doing taqlid of individuals from the Sahabah and their elders.” (Fayd al-Qadir by al-Munawi, 1:210)

Shaykh Wali Allah al-Dihlawi (Allah – Exalted is He – have mercy on him) said in another place: “Know that there is great welfare in adopting these four madhhabs, and in turning away from all of them is great corruption, and we will explain that with reasons...” (‘Iqd al-Jid, p. 53)

He said in another place: “So when an ignorant person is in the lands of India or the lands of Transoxiana, and there is no Shafi‘i, Maliki or Hanbali scholar there, and no book from the books of those madhhabs, it is necessary for him to do taqlid of the madhhab of Abu Hanifah, and it is forbidden for him to leave his madhhab, because by doing so he will release [himself from] the noose of the Shari‘ah and will remain aimless and without purpose; as distinguished from the situation where one is in the two Harams, because there it is easy for him to know all the madhhabs. It is not sufficient for him to adopt [the opinions of the madhhab] by speculation and without assurance, nor to take from the tongues of the commoners, nor to take from an unknown book, all of which are mentioned in al-Nahr al-Fa‘iq Sharh Kanz al-Daqa‘iq.” (al-Insaf fi Bayan Asbab al-Ikhtilaf, pp. 77-8)

It is apparent from all of this that the objective is adherence to what has come of the laws of the Shari‘ah in the Qur‘an and Sunnah, and that it is not usually easy for a non-mujtahid to derive these laws by himself, either because he is unable to understand them, or because the texts hold more than one meaning, or due to the apparent contradiction of evidences, so he relies on the opinion of a mujtahid whose opinion he has trust in over other than him, or the opinion of a mujtahid whose madhhab is well-known in his land. This is adoption of a madhhab (tamadhhub) or individual taqlid (al-taqlid al-shakhsi).

However, adopting a specific madhhab is not negated by a learned scholar – who has insight into the evidences of the laws in an issue from the issues – adopting the opinion of another madhhab, not on the basis of whim, but on the basis of a stronger evidence that appears to him. Based on this, many of the jurists of the Hanafis issue fatwa in many issues according to an opinion that opposes the opinion of Imam Abu Hanifah (Allah – Exalted is He – have mercy on him), as they did in the issue of cropsharing (muzara‘ah), and taking payment for teaching the Noble Qur‘an, and in the issue of a person duped [in a monetary transaction] having the option [to cancel the deal] and other well-known issues.

This is due to what our ‘ulama’ have stated explicitly that taqlid of a specific Imam is not a ruling of the Shari‘ah per se, but it is only a fatwa that was issued in order to regulate the affairs of religion, and to avoid what was feared in not doing so, of the corruptions of playing [with the religion] and following desires.

I heard my father ‘Allamah Mufti Muhammad Shafi‘ (Allah – Exalted is He – have mercy on him) relate numerous times the statement of Shaykh al-Hind Imam Shaykh Mahmud al-Hasan (Allah – Exalted is He – have mercy on

him): “Indeed taqlid of a specific madhhab is not a ruling of the Shari’ah per se, but it is a fatwa that was issued in order to regulate the religion by means of it.”

Imam Shaykh Ashraf ‘Ali al-Thawfi (Allah – Exalted is He – have mercy on him) said in one of his sermons: “Thus, we do not believe that individual taqlid is mandatory or obligatory in itself, but we say that the affairs of religion are regulated by individual taqlid, and there is chaos in abandoning taqlid.” (Khutbat Hakim al-Ummat, 6:172)

From the corollaries of this viewpoint is that whenever there is safety from following desires, there is no harm in adopting that which is stronger in evidence for a scholar that is qualified to examine the evidences. Imam Faqih Shaykh Rashid Ahmad al-Ghazali (Allah – Exalted is He – have mercy on him) said: “Indeed the jurists banned the laypeople from non-individual taqlid (which is taqlid of a madhhab in one issue and another in another issue) for the reason of these [corrupt consequences]. However a scholar who is safe from these corrupt consequences, it is permissible for him to exercise non-individual taqlid even today, with the condition that he does not cause confusion and chaos thereby amongst the commoners.” (Tadhkirat al-Rashid, 1:132)

He said in another place: “The upshot is that when it is established that this ruling from our Imam goes against the Book and Sunnah, it is necessary for every believer to leave it, and no one will deny this after it becomes clear, but how is it possible for laypeople to verify this matter?”

The teacher of our teachers, Imam Ashraf ‘Ali al-Thawfi (Allah – Exalted is He – have mercy on him), explained this matter with extreme moderation and balance, so there is no harm in citing his statement with his wording followed by its Arabic translation:

Just as rejecting taqlid is deserving of censure, extremism and rigidity therein is also deserving of condemnation. It has preceded that a mujtahid is not imitated with the belief that he is the lawgiver and bringer of laws, but he is only imitated with the belief that he is a clarifier of the laws and an elucidator of the legislations and one who reveals the intent of Allah (Exalted is He) and the Messenger (Allah bless him and grant him peace). This is why taqlid is only acted upon when a matter negating that belief or eliminating it does not arise.

Thus, if it is clear to a scholar with depth of insight, perception of mind, fairness of temperament, by his investigation, or to a layperson through the medium of that scholar by the testimony of his heart – with the condition that he is fearful [of Allah] (muttaqi) – that the stronger [position] in this issue is another opinion, it will be examined if there is any possibility for the permissibility of acting on the weaker position based on the evidence of the Shari’ah or not? If there is scope there, and it is feared that in publicising the disagreement there will be tribulation and confusion amongst the commoners, it is better in such a situation to act on the weaker position, to save the common Muslims from division. This is proven by what ‘A’ishah (Allah – Exalted is He – be pleased with her) narrated, she said: “The Messenger of Allah (Allah bless him and grant him peace) said: ‘Do you not see that your people, when they [re-]built the Ka’bah, they were deficient in [building it on] the foundations of Ibrahim?’ So I said: ‘O Messenger of Allah! Will you not return it to the foundations of Ibrahim?’ So he said: ‘If it were not for the recentness of your people in disbelief, I would have done [so].’” The Six transmitted it besides Abu Dawud. So despite building the Ka’bah on the foundations of Ibrahim (upon him peace) being superior, the Messenger of Allah (Allah bless him and grant him peace) opted for the weaker option, for fear of tribulation and confusion, because this weaker option was permissible in the Shari’ah, even if weak... Likewise it is narrated from Ibn Mas’ud (Allah – Exalted is He – be pleased with him) that he prayed four (meaning, in travel), so it was said to him: “You criticise ‘Uthman [for praying four in travel], and then you prayed four?!” He said: “Dissent is evil.” Abu Dawud transmitted it. So despite it being stronger according to Ibn Mas’ud (Allah – Exalted is He – be pleased with him) to shorten [the prayer] in travel, he prayed it in full to avoid dissent and evil. Apparently, he believed in the validity of that also, so by this what we mentioned – that if the weaker option is permissible, opting for it is better to avoid tribulation and confusion – is strengthened.

However, if the weaker option does not allow for permissibility, rather it necessitates the omission of an obligation or the performance of a prohibition, and it has no evidence besides analogy, and there is an explicit authentic hadith for the stronger side, it is necessary to act on the hadith without hesitation, and taqlid is not permissible in this situation at all, because the foundation of religion is the Noble Qur'an and the Sunnah, and the objective of taqlid is nothing besides acting on them with ease and safety. So when the harmony between them [i.e. taqlid and acting on the Qur'an and Sunnah] is negated, it is necessary to act on the Qur'an and Sunnah, and rigidity on taqlid in such a situation is the taqlid on which censure has occurred in the Qur'an and Sunnah and the statement of the 'ulama'. Thus it is narrated from 'Adiyy ibn Hatim (Allah – Exalted is He – be pleased with him), he said: "I came to the Prophet (Allah bless him and grant him peace), and I heard him recite: 'They have taken their rabbis and their monks as gods beside Allah' (9:31) He said: 'They would not worship them, but when they made anything halal, they considered it halal, and when they made anything haram, they made it haram.'" Al-Tirmidhi transmitted it.

And the practice of the Salaf and the verifiers has always been that whenever it appears to them that their opinion or the opinion of another goes against the command of Allah (Exalted is He) or His Messenger (Allah bless him and grant him peace) they renounce it immediately, as is narrated from Numaylah al-Ansari (Allah be pleased with him), he said: Ibn 'Umar (Allah – Exalted is He – be pleased with them) was asked about eating hedgehog, so he recited: "Say: I do not find, in what has been revealed to me, anything prohibited for anyone who eats" [to the end of] the verse (6:145). So a shaykh next to him said: I heard Abu Hurayrah say: Hedgehog was mentioned before the Messenger of Allah (Allah bless him and grant him peace), and he said: "An impurity from the impurities," so Ibn 'Umar said: "If the Messenger of Allah (Allah bless him and grant him peace) said this, it is as he said, as we did not know." Abu Dawud transmitted it.

The 'ulama' of the Hanafis also remained on the practice of this principle, so they left the opinions of their Imam in a number of issues, and by this it becomes clear to every fair person that what some people accuse them of, of fanaticism and rigid taqlid, is a clear error which resulted from looking at the transmissions without understanding... However, it is not permissible, despite abandoning taqlid in this issue, to attack the honour of the mujtahid by lengthening the tongue against his respected self or holding a bad opinion in the heart that he abandoned an authentic hadith, because it is possible that that hadith did not reach him, or it reached him with a weak chain, or that hadith was interpreted by him with an indication of the Shari'ah. So he is excused. And vilifying the perfection of their knowledge due to being unacquainted with that hadith falls under the totality of lengthening the tongue against them because it is established that some hadiths did not reach some of the senior Sahabah regarding whose perfect knowledge there is no doubt, and that was not considered a deficiency in their perfection. Thus it is narrated from 'Ubayd ibn 'Umayr (Allah – Exalted is He – have mercy on him) in the story of the seeking of permission by Abu Musa (Allah – Exalted is He – be pleased with him) the statement of 'Umar (Allah – Exalted is He – be pleased with him): "This command of the Prophet (Allah bless him and grant him peace) was hidden to me. Trading and markets distracted me." Al-Bukhari transmitted it.

Likewise when a muqallid of that mujtahid, his breast has not expanded in that issue, and he thinks – due to good opinion of the mujtahid – that his opinion does not go against the hadith, so he continues to do taqlid of him in that issue due to this opinion, and he does not reject the authentic hadith, but he does not understand the agreement of his Imam with that authentic hadith in detail, it is not permissible to blame that muqallid, because he is also adhering to evidence of the Shari'ah, and he does not aim but adherence to the Shari'ah; and likewise it is not permissible for that muqallid to condemn that scholar who left taqlid in that issue due to the aforementioned reason, because this variation of theirs is akin to the variation which occurred amongst the Salaf and on which the 'ulama' said: "Indeed our madhhab is correct – probabilistically – with the possibility of being incorrect, and the madhhab of others is incorrect – probabilistically – with the possibility of being correct." So when the other side has the possibility of being correct also, how can it be permissible, because of that, to declare any [of them] misguided, or to declare him a sinner, or to accuse him of bid'ah, or Wahhabiyyah, and cause envy, rancour, obstinacy, dissension, backbiting, insult, abuse, vilification and curse which are absolutely forbidden?!

Yes, the man who opposes the majority of the Muslims in their beliefs or in matters that are agreed-upon, or he extends his tongue with respect to the righteous Salaf, he is out of the Ahl al-Sunnah wa l-Jama'ah, because the Ahl al-Sunnah wa l-Jama'ah are those who tread the path of the Sahabah, and these matters go against their beliefs, so this man is outside of the Ahl al-Sunnah and included within the people of innovations and passions. And similar is the man who is extreme in his taqlid whereby he rejects the Qur'an and hadith because of it. So it is necessary to avoid and stay clear of these two men while shunning the well-known debates. This is the balanced truth. Anything besides it is error and excess. O Allah! Show us the truth as truth and grant us adherence to it, and show us falsehood as falsehood, and grant us avoidance of it. (al-Iqtisad fi l-Taqlid wa l-Ijtihad, pp. 84-9)

It is clear from this that adopting a specific madhhab and doing taqlid of a mujtahid is not [done] but to arrive at what is established from the rulings of the Shari'ah from the Book and Sunnah for those who are not able to reconcile between contradictory evidences. This is why the 'ulama' have clearly stated that there is no need for taqlid in creed and rulings that are stated explicitly, like the obligation of Salah, fasting, Zakah and Hajj, and the prohibition of wine, swine, usury, lying, deception and treachery, from the rulings in which there is no room for ijtihaad, and the texts on them do not hold more than one interpretation. (See al-Dhakhirah by al-Qarafi, 1:148)

Likewise, adopting a madhhab does not mean the 'ulama' of that madhhab do not go against the opinion of their Imam in any of the issues. From this is what is narrated from Imam al-Tahawi – and he was a Hanafi in madhhab – that he said: “Abu 'Ubayd ibn Harbawayh would revise rulings with me. So I answered him one day regarding an issue, and he said to me: ‘This is not the opinion of Abu Hanifah.’ Thereupon, I said to him: ‘O Qadi! Do I take everything Abu Hanifah said?’ He said: ‘I did not think you but a muqallid.’ I said to him: ‘Does any do taqlid besides a fanatic?’ He said to me: ‘Or an idiot.’ Then this statement flew across Egypt until it became a proverb.”

That which al-Tahawi (Allah – Exalted is He – have mercy on him) intended was that adopting a specific madhhab does not negate that a scholar like al-Tahawi adopts an opinion besides the opinion of his Imam in an issue, otherwise he will be a fanatic.

From this, it becomes clear that taqlid has [four] levels:

1. The first level is the taqlid of the layperson who does not have knowledge of the Qur'an and Sunnah, nor mastery of the sciences derived from them. Those who graduate from the seminars (madaris) and religious universities and have not acquired an ability by which they are able to compare between juristic opinions in light of the Book and Sunnah are included amongst them. The ruling of these [people] is that they adhere to the madhhab of a specific Imam, and they do not adopt [anything] besides the opinions of their Imam, because the opinion of their Imam is a proof with respect to them, and they do not have the right to assess whether the opinions of their Imam are against the Book and Sunnah by their mere opinion, because that which is necessary for such an assessment is not available to them.

2. The second level is the taqlid of the learned scholar, who, although he has not reached the level of complete ijtihaad, but because of the expanse of his knowledge of the sciences of the Qur'an and Sunnah, and his mastery in the madhhab of his Imam, and his extensive experience of jurisprudence and fatwa with skilled teachers, he acquired a strong ability to inspect the evidences of the jurisprudential rulings. Although such a scholar does taqlid of his Imam in most of the chapters of jurisprudence, nonetheless, when he finds an opinion of his Imam against a clear text and he does not find, despite his lengthy investigation, anything that contradicts that text, it is permissible for him to leave the opinion of his Imam because of that clear text, as we have mentioned previously from the statement of Imam Shaykh Ashraf 'Ali al-Thana'wi (Allah – Exalted is He – have mercy on him). Likewise, when such a scholar feels that in the madhhab of his Imam in an issue from the issues there is a severe crisis, and that there is a widespread need to avert this crisis by opting for another juristic madhhab from the four followed madhhabs, it is permissible for him to issue fatwa or act on the opinion of another mujtahid besides his Imam, just as the Hanafis

did in the issue of the wife of a lost man and other [issues], as will come – if Allah (Exalted is He) wills – in its place. However, the most precautionous [route] in this age in the issues in which there is a widespread affliction is that a man does not act independently in such issues with his individual opinion; rather, he consults other ‘ulama’, and he does not issue a general fatwa except after acquiring the agreement of a body of firmly-grounded scholars.

3. The third level is the taqlid of a mujtahid in the madhhab, and he is the one who, although he is a muqallid of his Imam in the principles, nonetheless, he has acquired a degree of ijtiḥad in the peripherals or in the jurisprudential cases (nawazil). The scholars of extraction (takhrij) and assessment (tarjih) and the mujtahids in jurisprudential issues (masa’il) are included in this as will come – if Allah (Exalted is He) wills.

4. The fourth level is the taqlid of an absolute mujtahid, because although he is independent in deriving the laws of the Shari’ah from the Book and Sunnah, but he has no alternative but to [exercise] a degree of taqlid, which is that he examines the statements of the Salaf from the Sahabah and Tabi’in, and holds to them in the explanation of the rulings of the Qur’an and Sunnah. And at times there is no clear text from the Book and Sunnah, but there is a statement from one of the Sahabah or Tabi’in, so he gives it preference over his personal opinion. This is just as Abu Hanifah (Allah be pleased with him) often adopted the opinion of Ibrahim al-Nakha’i, and al-Shafi’i the opinion of Ibn Jurayj, and Malik the opinion of one of the seven jurists of the Illuminated City. ‘Allamah Ibn al-Qayyim (Allah – Exalted is He – have mercy on him) said about the absolute mujtahid: “His ijtiḥad does not negate his taqlid of other than him at times, for you will not find any of the Imams, but he is a muqallid of one who is more learned than him in some rulings. And indeed al-Shafi’i (Allah have mercy on him and be pleased with him) said in a place of Hajj: ‘I said this doing taqlid of ‘Ata.’” (I’lam al-Muwaqqi’in 4:179)

Understanding The Four Madhhabs: The Problem with Anti-Madhhabism⁴

By Shaykh Abdal Hakim Murad

The ummah's greatest achievement over the past millennium has undoubtedly been its internal intellectual cohesion. From the fifth century of the Hijra almost to the present day, and despite the outward drama of the clash of dynasties, the Sunni Muslims have maintained an almost unfailing attitude of religious respect and brotherhood among themselves. It is a striking fact that virtually no religious wars, riots or persecutions divided them during this extended period, so difficult in other ways.

The history of religious movements suggests that this is an unusual outcome. The normal sociological view, as expounded by Max Weber and his disciples, is that religions enjoy an initial period of unity, and then descend into an increasingly bitter factionalism led by rival hierarchies. Christianity has furnished the most obvious example of this; but one could add many others, including secular faiths such as Marxism. On the face of it, Islam's ability to avoid this fate is astonishing, and demands careful analysis.

There is, of course, a straightforwardly religious explanation. Islam is the final religion, the last bus home, and as such has been divinely secured from the more terminal forms of decay. It is true that what Abdul Wadod Shalabi has termed 'spiritual entropy'⁵ has been at work ever since Islam's inauguration, a fact which is well-supported by a number of hadiths. Nonetheless, Providence has not neglected the ummah. Earlier religions slide gently or painfully into schism and irrelevance; but Islamic piety, while fading in quality, has been given mechanisms which allow it to retain much of the sense of unity emphasised in its glory days. Wherever the antics of the emirs and politicians might lead, the brotherhood of believers, a reality in the initial career of Christianity and some other faiths, continues, fourteen hundred years on, to be a compelling principle for most members of the final and definitive community of revelation in Islam. The reason is simple and unarguable: God has given us this religion as His last word, and it must therefore endure, with its essentials of tawhid, worship and ethics intact, until the Last Days.

Such an explanation has obvious merit. But we will still need to explain some painful exceptions to the rule in the earliest phase of our history. The Prophet himself (pbuh) had told his Companions, in a hadith narrated by Imam Tirmidhi, that "Whoever among you outlives me shall see a vast dispute". The initial schisms: the disastrous revolt against Uthman (r.a.)⁶, the clash between Ali (r.a.) and Talha, and then with Mu'awiyah⁷, the bloody scissions of the Kharijites⁸ – all these drove knives of discord into the Muslim body politic almost from the outset. Only the inherent sanity and love of unity among scholars of the ummah assisted, no doubt, by Providence overcame the early spasms of factionalism, and created a strong and harmonious Sunnism which has, at least on the purely religious plane, united ninety percent of the ummah for ninety percent of its history.⁹

It will help us greatly to understand our modern, increasingly divided situation if we look closely at those forces which divided us in the distant past. There were many of these, some of them very eccentric; but only two took the

4 Taken from <http://masud.co.uk/understanding-the-four-madhhabs-the-problem-with-anti-madhhabism/>

5 Abdul Wadod Shalabi, *Islam: Religion of Life* (2nd ed., Dorton, 1989), 10. This is the purport of the famous hadith: 'The best generation is my own, then that which follows them, then that which follows them'. (Muslim, *Fada'il al-Sahaba*, 210, 211, 212, 214)

6 The Khalifa was killed by Muslim rebels from Egypt, whose grievances included his alleged 'innovation' of introducing a standard text of the Holy Koran. (Evidently the belief among some modern Muslims that there can be no such thing as a 'good innovation' (bid'a hasana) has a long history!) For the full story, see pages 63-71 of M.A. Shaban, *Islamic History AD 600-750 (AH 132): A New Interpretation* (Cambridge, 1971).

7 Shaban, 73-7.

8 For the Kharijites see Imam al-Tabari, *History*, vol. XVIII, translated by M. Morony (New York, 1987), 21-31. Their monstrous joy at having assassinated the khalifa 'Ali ibn Abi Talib is recorded on page 22.

9 For an account of the historical development of the fiqh, see Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Islamabad, 1970); Hilmi Ziya Ulken, *Islam Dusuncesi* (Istanbul, 1946), 68-100; Omer Nasuhi Bilmen, *Hukuki Islamiyye ve Istalahati Fikhiyye Kamusu* (Istanbul, 1949-52), I, 311-338.

form of mass popular movements, driven by religious ideology, and in active rebellion against majoritarian faith and scholarship. For good reasons, these two acquired the names of Kharijism and Shi'ism. Unlike Sunnism, both were highly productive of splinter groups and sub-movements; but they nonetheless remained as recognisable traditions of dissidence because of their ability to express the two great divergences from mainstream opinion on the key question of the source of religious authority in Islam.

Confronted with what they saw as moral slippage among early caliphs, posthumous partisans of Ali (r.a.) developed a theory of religious authority which departed from the older egalitarian assumptions by vesting it in a charismatic succession of Imams. We need not stop here to investigate the question of whether this idea was influenced by the Eastern Christian background of some early converts, who had been nourished on the idea of the mystical apostolic succession to Christ, a gift which supposedly gave the Church the unique ability to read his mind for later generations. What needs to be appreciated is that Shi'ism, in its myriad forms, developed as a response to a widely-sensed lack of definitive religious authority in early Islamic society. As the age of the Righteous Caliphs came to a close, and the Umayyad rulers departed ever more conspicuously from the lifestyle expected of them as Commanders of the Faithful, the sharply-divergent and still nascent schools of fiqh seemed inadequate as sources of strong and unambiguous authority in religious matters. Hence the often irresistible seductiveness of the idea of an infallible Imam.¹⁰

This interpretation of the rise of Imamism also helps to explain the second great phase in Shi'i expansion. After the success of the fifth-century Sunni revival, when Sunnism seemed at last to have become a fully coherent system, Shi'ism went into a slow eclipse. Its extreme wing, as manifested in Ismailism, received a heavy blow at the hands of Imam al-Ghazali, whose book "Scandals of the Batinites" exposed and refuted their secret doctrines with devastating force.¹¹ This decline in Shi'i fortunes was only arrested after the mid-seventh century, once the Mongol hordes under Genghis Khan had invaded and obliterated the central lands of Islam. The onslaught was unimaginably harsh: we are told, for instance, that out of a hundred thousand former inhabitants of the city of Herat, only forty survivors crept out of the smoking ruins to survey the devastation.¹² In the wake of this tidal wave of mayhem, newly-converted Turcoman nomads moved in, who, with the Sunni ulama of the cities dead, and a general atmosphere of fear, turbulence, and Messianic expectation in the air, turned readily to extremist forms of Shi'i belief.¹³ The triumph of Shi'ism in Iran, a country once loyal to Sunnism, dates back to that painful period.¹⁴

The other great dissident movement in early Islam was that of the Kharijites, literally, the seceders, so-called because they seceded from the army of the Caliph Ali when he agreed to settle his dispute with Muawiyah through arbitration. Calling out the Quranic slogan, "Judgement is only God's", they fought bitterly against Ali and his army which included many of the leading Companions, until, in the year 38, Imam Ali defeated them at the Battle of Nahrawan, where some ten thousand of them perished.¹⁵

10 For a brief account of Shi'ism, see C. Glasse, *The Concise Encyclopedia of Islam* (London, 1989), 364-70.

11 Fada'ih al-Batiniya, ed. `Abd al-Rahman Badawi (Cairo, 1964).

12 For a detailed but highly readable account of the Mongol onslaught, see B. Spuler, *History of the Mongols, based on Eastern and Western Accounts of the Thirteenth and Fourteenth Centuries* (London, 1972); the best-known account by a Muslim historian is `Ala' al-Din al-Juwayni, *Tarikh-i Jihangusha*, translated by J.A. Boyle as *The History of the World-Conqueror* (Manchester, 1958).

13 For the slaughter of the ulema, see the dramatic account of Ahmad Aflaki, Mana'iq al-`Arifin, ed. Tahsin Tazici (Ankara, 1959-61), I, 21, who states that 50,000 scholars were killed in the city of Balkh alone.

14 The critical battle was fought in 873/1469, when the Mongol ruler of Iran was defeated by the Turcomans of the (Sunni) Ak Koyunlu dynasty, who were in turn defeated by Shah Isma'il, an extreme Shi'ite, in 906-7/1501, who inaugurated the Safavid rule which turned Iran into a Shi'i country. (The Cambridge History of Iran, VI, 174-5; 189-350; Sayyid Muhammad Sabzavari, tr. Sayyid Hasan Amin, *Islamic Political and Juridical Thought in Safavid Iran* [Tehran, 1989].)

15 The Kharijites represent a tendency which has reappeared in some circles in recent years. Divided into many factions, their principles were never fully codified. They were textualist, puritanical and anti-intellectual, rejected the condition of Quraishite birth for their Imam, and declared everyone outside their grouping to be kafir. For some interesting accounts, see M. Kafafi, 'The Rise of Kharijism', *Bulletin of the Faculty of Arts of the University of Egypt*, XIV (1952), 29-48; Ibn Hazm, *al-Fisal fi'l-milal wa'l-nihal* (Cairo, 1320), IV, 188-92; Ibrahim

Although the first Kharijites were destroyed, Kharijism itself lived on. As it formulated itself, it turned into the precise opposite of Shi'ism, rejecting any notion of inherited or charismatic leadership, and stressing that leadership of the community of believers should be decided by piety alone. This was assessed by very rudimentary criteria: the early Kharijites were known for extreme toughness in their devotions, and for the harsh doctrine that any Muslim who commits a major sin is an unbeliever. This notion of takfir (declaring Muslims to be outside Islam), permitted the Kharijite groups, camping out in remote mountain districts of Khuzestan, to raid Muslim settlements which had accepted Umayyad authority. Non-Kharijis were routinely slaughtered in these operations, which brought merciless reprisals from tough Umayyad generals such as al-Hajjaj ibn Yusuf. But despite the apparent hopelessness of their cause, the Kharijite attacks continued. The Caliph Ali (r.a.) was assassinated by Ibn Muljam, a survivor of Nahrawan, while the hadith scholar Imam al-Nasai, author of one of the most respected collections of sunan, was likewise murdered by Kharijite fanatics in Damascus in 303/915.¹⁶

Like Shi'ism, Kharijism caused much instability in Iraq and Central Asia, and on occasion elsewhere, until the fourth and fifth centuries of Islam. At that point, something of historic moment occurred. Sunnism managed to unite itself into a detailed system that was now so well worked-out, and so obviously the way of the great majority of ulama, that the attraction of the rival movements diminished sharply.

What happened was this. Sunni Islam, occupying the middle ground between the two extremes of egalitarian Kharijism and hierarchical Shi'ism, had long been preoccupied with disputes over its own concept of authority. For the Sunnis, authority was, by definition, vested in the Quran and Sunnah. But confronted with the enormous body of hadiths, which had been scattered in various forms and narrations throughout the length and breadth of the Islamic world following the migrations of the Companions and Followers, the Sunnah sometimes proved difficult to interpret. Even when the sound hadiths had been sifted out from this great body of material, which totalled several hundred thousand hadith reports, there were some hadiths which appeared to conflict with each other, or even with verses of the Quran. It was obvious that simplistic approaches such as that of the Kharijites, namely, establishing a small corpus of hadiths and deriving doctrines and law from them directly, was not going to work. The internal contradictions were too numerous, and the interpretations placed on them too complex, for the qadis (judges) to be able to dish out judgements simply by opening the Quran and hadith collections to an appropriate page.

The reasons underlying cases of apparent conflict between various revealed texts were scrutinised closely by the early ulama, often amid sustained debate between brilliant minds backed up with the most perfect photographic memories. Much of the science of Islamic jurisprudence (*usul al-fiqh*) was developed in order to provide consistent mechanisms for resolving such conflicts in a way which ensured fidelity to the basic ethos of Islam. The term *taarud al-adilla* (mutual contradiction of proof-texts) is familiar to all students of Islamic jurisprudence as one of the most sensitive and complex of all Muslim legal concepts.¹⁷ Early scholars such as Ibn Qutayba felt obliged to devote whole books to the subject.¹⁸

The ulama of *usul* recognised as their starting assumption that conflicts between the revealed texts were no more than conflicts of interpretation, and could not reflect inconsistencies in the Lawgiver's message as conveyed by the Prophet (pbuh). The message of Islam had been perfectly conveyed before his demise; and the function of subse-

Zerouki, *L'Imamat de Tahart: premier etat musulman du Maghreb* (Paris, 1987).

16 Probably because he had written a book celebrating the virtues of the caliph `Ali. See Ibn Hajar al-`Asqalani, *Tahdhib al-Tahdhib* (Hyderabad, 1325), I, 36-40.

17 See, for example, Imam al-Haramayn al-Juwayni, *al-Burhan fi usul al-fiqh* (Cairo, 1400), §§1189-1252.

18 Ibn Qutayba, *Ta'wil Mukhtalif al-Hadith* (Cairo, 1326). Readers of French will benefit from the translation of G. Lecomte: *Le Traite des divergences du hadith d'Ibn Qutayba* (Damascus, 1962). There is also a useful study by Ishaq al-Husayni: *The Life and Works of Ibn Qutayba* (Beirut, 1950). Mention should also be made of a later and in most respects similar work, by Imam al-Tahawi (d. 321): *Mushkil al-Athar* (Hyderabad, 1333), which is more widely used among the ulama.

quent scholars was exclusively one of interpretation, not of amendment.

Armed with this awareness, the Islamic scholar, when examining problematic texts, begins by attempting a series of preliminary academic tests and methods of resolution. The system developed by the early ulama was that if two Quranic or hadith texts appeared to contradict each other, then the scholar must first analyse the texts linguistically, to see if the contradiction arises from an error in interpreting the Arabic. If the contradiction cannot be resolved by this method, then he must attempt to determine, on the basis of a range of textual, legal and historiographic techniques, whether one of them is subject to takhsis, that is, concerns special circumstances only, and hence forms a specific exception to the more general principle enunciated in the other text.¹⁹ The jurist must also assess the textual status of the reports, recalling the principle that a Quranic verse will overrule a hadith related by only one isnad (the type of hadith known as ahad), as will a hadith supplied by many isnads (mutawatir or mashhur).²⁰ If, after applying all these mechanisms, the jurist finds that the conflict remains, he must then investigate the possibility that one of the texts was subject to formal abrogation (naskh) by the other.

This principle of naskh is an example of how, when dealing with the delicate matter of taarud al-adilla, the Sunni ulama founded their approach on textual policies which had already been recognised many times during the lifetime of the Prophet (pbuh). The Companions knew by ijma that over the years of the Prophets ministry, as he taught and nurtured them, and brought them from the wildness of paganism to the sober and compassionate path of monotheism, his teaching had been divinely shaped to keep pace with their development. The best-known instance of this was the progressive prohibition of wine, which had been discouraged by an early Quranic verse, then condemned, and finally prohibited.²¹ Another example, touching an even more basic principle, was the canonical prayer, which the early ummah had been obliged to say only twice daily, but which, following the Miraj, was increased to five times a day.²² Mutah (temporary marriage) had been permitted in the early days of Islam, but was subsequently prohibited as social conditions developed, respect for women grew, and morals became firmer.²³ There are several other instances of this, most being datable to the years immediately following the Hijra, when the circumstances of the young ummah changed in radical ways.

There are two types of naskh: explicit (sarih) or implicit (dimni).²⁴ The former is easily identified, for it involves

19 Imam Abu'l-Wahid al-Baji (d. 474), *Ihkam al-Fusul ila 'Ilm al-Usul*, ed. A. Turki (Beirut, 1986/1407), §§184-207; Imam Abu Ishaq al-Sirazi (d. 476), *al-Luma' fi usual al-fiqh* (Cairo, 1377), 17-24; Juwayni, §§327-52, 1247; Imam al-Shafi'i, tr. Majid Khadduri, *Al-Shafi'i's Risala: Treatise on the Foundations of Islamic Jurisprudence* (Cambridge, 1987), 103-8. Shafi'i gives a number of well-known examples of Koranic texts being subject to takhsis. For instance, the verse 'As for the thief, male and female, cut of their hands as a retribution from Allah,' (5:42) appears to be unconditional; however it is subject to takhsis by the hadith which reads 'Hands should not be cut off for fruits, nor the spadix of a palm tree, and that the hand should not be cut off unless the price of the thing stolen is a quarter of a dinar or more.' (Malik, Muwatta', Abu Daud, Sunan; see Shafi'i, *Risala*, 105.)

20 Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge, 1991), 356-65. This excellent book by a prominent Afghan scholar is by far the best summary of the theory of Islamic law, and should be required reading for every Muslim who wishes to raise questions concerning the Shari'a disciplines.

21 The verses in question were: 2:219, 4:43, and 5:93. See Kamali, 16-17.

22 Kamali, 150; Ibn Rushd, *The Distinguished Jurist's Primer*, tr. Imran Nyazee and Muhammad Abdul Rauf (Reading, 1994), 97. This new translation of the great classic *Bidayat al-Mujtahid*, only the first volume of which is available at present, is a fascinating explanation of the basic arguments over the proof texts (adilla) used by the scholars of the recognized madhabs. Ibn Rushd was a Maliki qadi, but presents the views of other scholars with the usual respect and objectivity. The work is the best-known example of a book of the Shari'a science of 'ilm al-khilaf (the 'Knowledge of Variant Rulings'; for a definition of this science see Imam Hujjat al-Islam al-Ghazali, *al-Mustasfa min 'ilm al-usul*, [Cairo, 1324] I, 5).

23 Kamali, 150 quoting Shatibi, *Muwafaqat*, III, 63.

24 Kamali, 154-160; Baji, §§383-450; Shirazi, 30-5; Juwayni, §§1412-1454; Ghazali, *Mustasfa*, I, 107-129. The problem was first addressed systematically by Imam al-Shafi'i. 'There are certain hadiths which agree with one another, and others which are contradictory to one another; the abrogating and the abrogated hadiths are clearly distinguished [in some of them]; in others the hadiths which are abrogating and abrogated are not indicated.' (*Risala*, 179.) For cases in which the Holy Koran has abrogated a hadith, or (more rarely) a hadith has

texts which themselves specify that an earlier ruling is being changed. For instance, there is the verse in the Qur'an (2:142) which commands the Muslims to turn in prayer to the Kaba rather than to Jerusalem.²⁵ In the hadith literature this is even more frequently encountered; for example, in ahadith narrated by Imam Muslim we read: "I used to forbid you to visit graves; but you should now visit them."²⁶ Commenting on this, the ulama of hadith explain that in early Islam, when idolatrous practices were still fresh in peoples memories, visiting graves had been forbidden because of the fear that some new Muslims might commit shirk. As the Muslims grew stronger in their monotheism, however, this prohibition was discarded as no longer necessary, so that today it is a recommended practice for Muslims to go out to visit graves in order to pray for the dead and to be reminded of the akhira.²⁷

The other type of naskh is more subtle, and often taxed the brilliance of the early ulama to the limit. It involves texts which cancel earlier ones, or modify them substantially, but without actually stating that this has taken place. The ulama have given many examples of this, including the two verses in Surat al-Baqarah which give differing instructions as to the period for which widows should be maintained out of an estate (2:240 and 234).²⁸ And in the hadith literature, there is the example of the incident in which the Prophet (pbuh) once told the Companions that when he prayed sitting because he was burdened by some illness, they should sit behind him. This hadith is given by Imam Muslim. And yet we find another hadith, also narrated by Muslim, which records an incident in which the Companions prayed standing while the Prophet (pbuh) was sitting. The apparent contradiction has been resolved by careful chronological analysis, which shows that the latter incident took place after the former, and therefore takes precedence over it.²⁹ This has duly been recorded in the fiqh of the great scholars.

The techniques of naskh identification have enabled the ulama to resolve most of the recognised cases of taarud al-adilla. They demand a rigorous and detailed knowledge not just of the hadith disciplines, but of history, sirah, and of the views held by the Companions and other scholars on the circumstances surrounding the genesis and exegesis of the hadith in question. In some cases, hadith scholars would travel throughout the Islamic world to locate the required information pertinent to a single hadith.³⁰

In cases where in spite of all efforts, abrogation cannot be proven, then the ulama of the salaf recognised the need to apply further tests. Important among these is the analysis of the matn (the transmitted text rather than the isnad of the hadith).³¹ Clear (sarih) statements are deemed to take precedence over allusive ones (kinayah), and definite (muhkam) words take precedence over words falling into more ambiguous categories, such as the interpreted (mufassar), the obscure (khafi) and the problematic (mushkil).³² It may also be necessary to look at the position of the narrators of the conflicting hadiths, giving precedence to the report issuing from the individual who was more directly involved. A famous example of this is the hadith narrated by Maymunah which states that the Prophet (pbuh) married her when not in a state of consecration (ihram) for the pilgrimage. Because her report was that of an eyewitness, her hadith is given precedence over the conflicting report from Ibn Abbas, related by a similarly

abrogated a Koranic verse, see Ghazali, Mustasfa, I, 124-6; Baji, §429-39; Juwayni, §1440-3. The sunna is able to abrogate the Koran because it too is a revelation (wahy); as Imam al-Baji explains it, 'The Blessed Prophet's own sunnas do not in reality abrogate anything themselves; they only state that Allah has cancelled the ruling of a Koranic passage. Hence the abrogation, in reality, is from Allah, whether the abrogating passage is in the Koran or the Sunna.' (Baji, §435.)

25 For this as an instance of abrogation, see Shafi'i, Risala (Khadduri), 133.

26 Muslim, Jana'iz, 100.

27 Kamali, 154.

28 Kamali, 155; see also Shafi'i, Risala (khadduri), 168.

29 Sayf ad-Din Ahmed Ibn Muhammad, Al-Albani Unveiled: An Exposition of His Errors and Other Important Issues (London, 2nd ed., 1415), 49-51; Ibn Rushd, The Distinguished Jurist's Primer, 168-170; Shafi'i, Risala (Khadduri), 199-202.

30 M.Z. Siddiqi, Hadith Literature, its Origins, Development and Special Features (Revised ed. Cambridge, 1993), 3, 40, 126.

31 Defects in the matn can sometimes make a hadith weak even if its isnad is sound (Siddiqi, 113-6).

32 Kamali, 361; Bilmen, I, 74-6, 82-4. The classification of revealed texts under these headings is one of the most sensitive areas of usul al-fiqh.

sound isnad, which states that the Prophet was in fact in a state of ihram at the time.³³

There are many other rules, such as that which states that 'prohibition takes precedence over permissibility'.³⁴ Similarly, conflicting hadiths may be resolved by utilising the fatwa of a Companion, after taking care that all the relevant fatwa are compared and assessed.³⁵ Finally, recourse may be had to qiyas (analogy).³⁶ An example of this is the various reports about the solar eclipse prayer (salat al-kusuf), which specify different numbers of bowings and prostrations. The ulama, having investigated the reports meticulously, and having been unable to resolve the contradiction by any of the mechanisms outlined above, have applied analogical reasoning by concluding that since the prayer in question is still called salaah, then the usual form of salaah should be followed, namely, one bowing and two prostrations. The other hadiths are to be abandoned.³⁷

This careful articulation of the methods of resolving conflicting source-texts, so vital to the accurate derivation of the Shariah from the revealed sources, was primarily the work of Imam al-Shafi'i. Confronted by the confusion and disagreement among the jurists of his day, and determined to lay down a consistent methodology which would enable a fiqh to be established in which the possibility of error was excluded as far as was humanly possible, Shafi'i wrote his brilliant *Risala* (Treatise on Islamic jurisprudence). His ideas were soon taken up, in varying ways, by jurists of the other major traditions of law; and today they are fundamental to the formal application of the Shariah.³⁸

Shafi'i's system of minimising mistakes in the derivation of Islamic rulings from the mass of evidence came to be known as *usul al-fiqh* (the roots of fiqh). Like most of the other formal academic disciplines of Islam, this was not an innovation in the negative sense, but a working-out of principles already discernible in the time of the earliest Muslims. In time, each of the great interpretative traditions of Sunni Islam codified its own variation on these roots, thereby yielding in some cases divergent branches (i.e. specific rulings on practice). Although the debates generated by these divergences could sometimes be energetic, nonetheless, they were insignificant when compared to the great sectarian and legal disagreements which had arisen during the first two centuries of Islam before the science of *usul al-fiqh* had put a stop to such chaotic discord.

It hardly needs remarking that although the Four Imams, Abu Hanifa, Malik ibn Anas, al-Shafi'i and Ibn Hanbal, are regarded as the founders of these four great traditions, which, if we were asked to define them, we might sum up as sophisticated techniques for avoiding innovation, their traditions were fully systematised only by later generations of scholars. The Sunni ulama rapidly recognised the brilliance of the Four Imams, and after the late third century of Islam we find that hardly any scholars adhered to any other approach. The great hadith specialists, including al-Bukhari and Muslim, were all loyal adherents of one or another of the madhhabs, particularly that of Imam al-Shafi'i. But within each madhhab, leading scholars continued to improve and refine the roots and branches of their school. In some cases, historical conditions made this not only possible, but necessary. For instance, scholars of the school of Imam Abu Hanifah, which was built on the foundations of the early legal schools of Kufa and Basra, were wary of some hadiths in circulation in Iraq because of the prevalence of forgery engendered by the strong sectarian influences there. Later, however, once the canonical collections of Bukhari, Muslim and others became available, subsequent generations of Hanafi scholars took the entire corpus of hadiths into account in formulating and revising their madhhab. This type of process continued for two centuries, until the Schools reached a condition of maturity in the fourth and fifth centuries of the Hijra.³⁹

33 Kamali, 361.

34 Kamali, 362.

35 Kamali, 235-44; Ghazali, Mustasfa, 1, 191,2; Juwayni, §343.

36 For some expositions of the difficult topic of qiyas, see Kamali, 197-228; Shirazi, 53-63; Juwayni, §§676-95; Imam Sayf al-Din al-Amidi (*al-Ihkam fi Usul al-Ahkam*, Cairo, 1332/1914), III, 261-437, IV, 1-161.

37 Kamali, 363-4.

38 The accessible English translation of his best-known work on legal theory has already been mentioned above in note 15.

39 The question is often asked why only four schools should be followed today. The answer is straightforward: while in theory there is no reason whatsoever why the number has to be four, the historical fact is that only these four have sufficient detailed literature to support them. In connection with the hyper-literalist Zahiri

It was at that time, too, that the attitude of toleration and good opinion between the Schools became universally accepted. This was formulated by Imam al-Ghazali, himself the author of four textbooks of Shafi'i fiqh,⁴⁰ and also of *Al-Mustasfa*, widely acclaimed as the most advanced and careful of all works on *usul*, *usul al-fiqh fil madhhab*. With his well-known concern for sincerity, and his dislike of ostentatious scholarly rivalry, he strongly condemned what he called 'fanatical attachment to a madhhab'.⁴¹ While it was necessary for the Muslim to follow a recognised madhhab in order to avert the lethal danger of misinterpreting the sources, he must never fall into the trap of considering his own school categorically superior to the others. With a few insignificant exceptions in the late Ottoman period, the great scholars of Sunni Islam have followed the ethos outlined by Imam al-Ghazali, and have been conspicuously respectful of each others madhhab. Anyone who has studied under traditional ulama will be well-aware of this fact.⁴²

The evolution of the Four Schools did not stifle, as some Orientalists have suggested,⁴³ the capacity for the refinement or extension of positive law.⁴⁴ On the contrary, sophisticated mechanisms were available which not only per-

madhhab, Ibn Khaldun writes: 'Worthless persons occasionally feel obliged to follow the Zahiri school and study these books in the desire to learn the Zahiri system of jurisprudence from them, but they get nowhere, and encounter the opposition and disapproval of the great mass of Muslims. In doing so they often are considered innovators, as they accept knowledge from books for which no key is provided by teachers.' (Muqaddima, tr. F. Rosenthal [Princeton, 1958], III, 6.)

40 These are (in order of length, shortest first), al-Khulasa, al-Wajiz, al-Wasit and Basit. The great Imam penned over a hundred other books, earning him from a grateful Umma the title 'Hujjat al-Islam' (The Proof of Islam). It is hardly surprising that when the ulema quote the famous sahih hadith 'Allah shall raise up for this Umma at the beginning of each century someone who will renew for it its religion,' they cite Imam al-Ghazali as the renewer of the fifth century of Islam. See for instance Imam Muhammad al-Sakhawi (d. 902AH), *al-Maqasid al-Hasana fi bayan kathirin min al-ahadith al-mushtahira `ala al-alsina* (Beirut, 1405), 203-4, who lists the 'renewers' as follows: 'Umar ibn 'Abd al-'Aziz, al-Shafi'i, Ibn Surayj, Abu Hamid al-Isfaraini, Hujjat al-Islam al-Ghazali, Fakhr al-Din al-Razi, Ibn Daqaq al-'Id, al-Balqini. Imam Ibn 'Asakir (d. 571AH), in his famous work *Tabyin Kadhib al-Muftari fima nusiba ila al-Imam Abi'l-Hasan al-Ash'ari*, ed. Imam Muhammad Zahid al-Kawthari (Damascus, 1347, reproduced Beirut, 1404), 52-4, has the following list: 'Umar ibn 'Abd al-'Aziz, al-Shafi'i, al-Ash'ari, al-Baqillani, al-Ghazali.

41 Imam Abu Hamid al-Ghazali, *Ihya 'Ulum al-Din* (Cairo: Mustafa al-Halibi, 1347), III, 65.

42 'The most characteristic qualities of the great ulema are dignity and serenity, respect for other scholars, compassionate concern for the Umma, and following the Prophet, upon whom be blessings and peace, whose view was always broad, his wisdom perfect, and his toleration superb.' Imam Yusuf al-Dajawi (d. 1365AH), *Maqalat wa-Fatawa* (Cairo: Majmu' al-Buhuth al-Islamiya, 1402), II, 583. 'True fairness is to regard all the Imams as worthy; whoever follows the madhhab of a Mujtahid because he has not attained the level of Ijtihad, is not harmed by the fact that other imams differ from his own.' (Shatibi, *I'tisam*, III, 260.) There are many examples cited by the scholars to show the respect of the madhhabs for each other. For instance, Shaykh Ibrahim al-Samadi (d. 1662), a pious scholar of Damascus, once prayed to be given four sons, so that each might follow one of the recognized madhhabs, thereby bringing a fourfold blessing to his house. (Muhammad al-Amin al-Muhibbi, *Khulasat al-atar fi `yan al-qarn al-hadi `ashar* [Cairo, 1248], I, 48.) And it was not uncommon for scholars to be able to give fatwas in more than one madhhab (such a man was known technically as *mufti al-fraq*). (Ibn al-Qalanisi, *Dhayl Tarikh Dimasq* [Beirut, 1908], 311.) Hostility between the Madhhabs was rare, despite some abuse in the late Ottoman period. Al-Dhahabi counsels his readers as follows: 'Do not think that your madhhab is the best, and the one most beloved by Allah, for you have no proof of this. The Imams, may Allah be pleased with them, all follow great goodness; when they are right, they receive two rewards, and when they are wrong, they still receive one reward.' (al-Dhahabi, *Zaghal al-'Ilm wa'l-Talab*, 15, quoted in Sa'id Ramadan al-Buti, *Al-Lamadhhabiya Akhtar Bid'a tuhaddid al-Shari'a al-Islamiya*, 3rd edition, Beirut, 1404, 81.) The final words here ('right ... reward') are taken from a well-known hadith to this effect (Bukhari, *I'tisam*, 21.)

43 Most notoriously N. Couson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago, 1969), 43, 50, 96; but also I. Goldziher, Louis Ardet and Montgomery Watt.

44 It will be useful here to refute an accusation made by some Orientalists, and even by some modern Muslims, who suggest that the scholars were reluctant to challenge the madhhab system because if they did so they would be 'out of a job', and lucrative qadi positions, restricted to followers of the orthodox Schools, would be barred to them. This is a particularly distasteful example of the modern tendency to slander men whose moral integrity was no less impressive than their learning: to suggest that the great Ulema of Islam followed the interpretation of Islam that they did simply for financial reasons is insulting and a disgraceful form of *ghiba* (back-

mitted qualified individuals to derive the Shariah from the Quran and Sunnah on their own authority, but actually obliged them to do this. According to most scholars, an expert who has fully mastered the sources and fulfilled a variety of necessary scholarly conditions is not permitted to follow the prevalent rulings of his School, but must derive the rulings himself from the revealed sources. Such an individual is known as a mujtahid,⁴⁵ a term derived from the famous hadith of Muadh ibn Jabal.⁴⁶

Few would seriously deny that for a Muslim to venture beyond established expert opinion and have recourse directly to the Quran and Sunnah, he must be a scholar of great eminence. The danger of less-qualified individuals misunderstanding the sources and hence damaging the Shariah is a very real one, as was shown by the discord and strife which afflicted some early Muslims, and even some of the Companions themselves, in the period which preceded the establishment of the Orthodox Schools. Prior to Islam, entire religions had been subverted by inadequate scriptural scholarship, and it was vital that Islam should be secured from a comparable fate.

In order to protect the Shariah from the danger of innovation and distortion, the great scholars of *usul* laid down rigorous conditions which must be fulfilled by anyone wishing to claim the right of *ijtihad* for himself.⁴⁷ These conditions include:

- (a) mastery of the Arabic language, to minimise the possibility of misinterpreting Revelation on purely linguistic grounds;
- (b) a profound knowledge of the Quran and Sunnah and the circumstances surrounding the revelation of each verse and hadith, together with a full knowledge of the Quranic and hadith commentaries, and a control of all the interpretative techniques discussed above;
- (c) knowledge of the specialised disciplines of hadith, such as the assessment of narrators and of the *matn* [text];
- (d) knowledge of the views of the Companions, Followers and the great imams, and of the positions and reasoning expounded in the textbooks of *fiqh*, combined with the knowledge of cases where a consensus (*ijma*) has been reached;

biting). In any case, it can be easily refuted. The great ulema of the past were in almost every case men of independent means, and did not need to earn from their scholarship. For instance, Imam Ibn Hajar had inherited a fortune from his mother (al-Sakhawi, *al-Daw' al-Lami' li-Ahl al-Qarn al-Tasi'* (Cairo, 1353-5), II, 36-40). Imam al-Suyuti came from a prominent and wealthy family of civil servants (see his own *Husn al-Muhadara fi akhbar Misr wa'l-Wahira* [Cairo, 1321], I, 153, 203). For examples of scholars who achieved financial independence see the editor's notes to Ibn Jam'a's *Tadhkirat al-Sami' fi Adab al-'Alim wa'l-Muta'allim* (Hyderabad, 1353), 210: Imam al-Baji was a craftsman who made gold leaf: 'his academic associates recall that he used to go out to see them with his hand sore from the effects of the hammer' (Dhahabi, *Tadhkira*, III, 349-50); while the Khalil ibn Ishaq, also a Maliki, was a soldier who had taken part in the liberation of Alexandria from the Crusaders, and often gave his *fiqh* classes while still wearing his chain mail and helmet (Suyuti, *Husn al-Muhadara*, I, 217.) And it was typical for the great scholars to live lives of great frugality: Imam al-Nawawi, who died at the age of 44, is said to have damaged his health by his ascetic lifestyle: for instance, he declined to eat of the fruit of Damascus, where he taught, because it was grown on land whose legal status he regarded as suspect. (al-Yafi'i, *Mir'at al-Janan wa-Ibrat al-Yaqzan* [Hyderabad, 1338], IV, 1385.) It is not easy to see how such men could have allowed motives of financial gain to dictate their approach to religion.

45 A mujtahid is a scholar qualified to perform *ijtihad*, defined as 'personal effort to derive a Shari'a ruling of the *furu'* from the revealed sources.' (Bilmen, I, 247.) His chief task - the actual process of derivation - is called *istinbat*, originally signifying in Arabic 'bringing up water with difficulty from a well.' (Bilmen, I, 247.)

46 'When Allah's Messenger, upon him be blessings and peace, wished to send Mu'adh ibn Jabal to the Yemen, he asked him: 'How will you judge if an issue is presented to you for judgement?' 'By what is in Allah's Book,' he replied. 'And if you do not find it in Allah's Book?' 'Then by the Sunna of Allah's Messenger.' 'And if it is not in the Sunna of Allah's Messenger?' 'Then I shall strive in my own judgement' (*ajtahidu ra'yi*). (Abu Daud, *Aqdiya*, 11.)

47 Kamali, 366-393, especially 374-7; see also Amidi, IV, 219-11; Shirazi, 71-2; Bilmen, I, 247, 250, 251-2.

(e) knowledge of the science of juridical analogy (qiyas), its types and conditions;

(f) knowledge of one's own society and of public interest (maslahah);

(g) knowing the general objectives (maqasid) of the Shariah;

(h) a high degree of intelligence and personal piety, combined with the Islamic virtues of compassion, courtesy, and modesty.

A scholar who has fulfilled these conditions can be considered a mujtahid *fil-shar*, and is not obliged, or even permitted, to follow an existing authoritative madhhab.⁴⁸ This is what some of the Imams were saying when they forbade their great disciples from imitating them uncritically. But for the much greater number of scholars whose expertise has not reached such dizzying heights, it may be possible to become a mujtahid *fi'l-madhhab*, that is, a scholar who remains broadly convinced of the doctrines of his school, but is qualified to differ from received opinion within it.⁴⁹ There have been a number of examples of such men, for instance Imam al-Nawawi among the Shafi'is, Qadi Ibn Abd al-Barr among the Malikis, Ibn Abidin among the Hanafis, and Ibn Qudama among the Hanbalis. All of these scholars considered themselves followers of the fundamental interpretative principles of their own madhhabs, but are on record as having exercised their own gifts of scholarship and judgement in reaching many new verdicts within them.⁵⁰ It is to these experts that the Mujtahid Imams directed their advice concerning *ijtihād*, such as Imam al-Shafi'i's instruction that 'if you find a hadith that contradicts my verdict, then follow the hadith'.⁵¹ It is obvious that whatever some writers nowadays like to believe, such counsels were never intended for use by the Islamically-uneducated masses. Imam al-Shafi'i was not addressing a crowd of butchers, nightwatchman and donkey-drovers.

Other categories of mujtahids are listed by the *usul* scholars; but the distinctions between them are subtle and not relevant to our theme.⁵² The remaining categories can in practice be reduced to two: the *muttabi* (follower), who

48 Kamali, 386-8. Examples of such men from the time of the *Tabi'un* onwards include 'Ibrahim al-Nakha'i, Ibn Abi Layla, Ibn Shubruma, Sufyan al-Thawri, al-Hasan ibn Salih, al-Awza'i, 'Amr ibn al-Harith, al-Layth ibn Sa'd, 'Abdullah ibn Abi Ja'far, Ishaq ibn Rahawayh, Abu 'Ubayd al-Qasim ibn Salam, Abu Thawr, Ibn Khuzayma, Ibn Nasr al-Marwazi, Ibn Mundhir, Daud al-Zahiri, and Ibn Jarir al-Tabari, may Allah show them all His mercy.' (Bilmen, I, 324.) It should be noted that according to some scholars a concession (*rukhsa*) exists on the matter of the permissibility of *taqlid* for mujtahid: Imam al-Baji and Imam al-Haramayn, for instance, permit a mujtahid to follow another mujtahid in cases where his own research to establish a matter would result in dangerous delay to the performance of a religious duty. (Baji, §783; Juwayni, §1505.)

49 Kamali, 388; Bilmen, I, 248.

50 'The major followers of the great Imams did not simply imitate them as some have claimed. We know, for instance, that Abu Yusuf and al-Shaybani frequently dissented from the position of Abu Hanifa. In fact, it is hard to find a single question of *fiqh* which is not surrounded by a debate, in which the independent reasoning and *ijtihād* of the scholars, and their determination to locate the precise truth, are very conspicuous. In this way we find Imam al-Shafi'i determining, in his new madhhab, that the time for *Maghrib* does not extend into the late twilight (*shafaq*); while his followers departed from this position in order to follow a different proof-text (*dalil*). Similarly, Ibn 'Abd al-Barr and Abu Bakr ibn al-'Arabi hold many divergent views in the madhhab of Imam Malik. And so on.' (Imam al-Dajawi, II, 584.)

51 'Whenever a mujtahid reaches a judgement in which he goes against *ijma'*, or the basic principles, or an unambiguous text, or a clear *qiyas* (*al-qiyas al-jali*) free of any proof which contradicts it, his *muqallid* is not permitted to convey his view to the people or to give a *fatwa* in accordance with it ... however no-one can know whether this has occurred who has not mastered the principles of jurisprudence, clear *qiyas*, unambiguous texts, and anything that could intervene in these things; and to know this one is obliged to learn *usul al-fiqh* and immerse oneself in the ocean of *fiqh*.' (Imam Shihab al-Din al-Qarafi, *al-Furuq* (Cairo, 1346), II, 109.)

52 The *ulema* usually recognize seven different degrees of Muslims from the point of view of their learning, and for those who are interested they are listed here, in order of scholarly status. (1,2) The *mujtahidun fi'l-shar'* (Mujtahids in the Shari'a) and the *mujtahidun fi'l-madhhab* (Mujtahids in the Madhhab) have already been mentioned. (3) *Mujtahidun fi'l-masa'il* (Mujtahids on Particular Issues) are scholars who remain within a school, but are competent to exercise *ijtihād* on certain aspects within it which they know thoroughly. (4) *Ashab al-Takhrij* (Resolvers of Ambiguity), who are competent to 'indicate which view was preferable in cases of ambiguity,

follows his madhhab while being aware of the Quranic and hadith texts and the reasoning, underlying its positions,⁵³ and secondly the muqallid (emulator), who simply conforms to the madhhab because of his confidence in its scholars, and without necessarily knowing the detailed reasoning behind all its thousands of rulings.⁵⁴

Clearly it is recommended for the muqallid to learn as much as he or she is able of the formal proofs of the madhhab. But it is equally clear that not every Muslim can be a scholar. Scholarship takes a lot of time, and for the ummah to function properly most people must have other employment: as accountants, soldiers, butchers, and so forth.⁵⁵ As such, they cannot reasonably be expected to become greatulama as well, even if we suppose that all of

or regarding suitability to prevailing conditions'. (5) Ashab al-Tarjih (People of Assessment) are 'those competent to make comparisons and distinguish the correct (sahih) and the preferred (rajih, arjah) and the agreed-upon (mufta biha) views from the weak ones' inside the madhhab. (6) Ashab al-Tashih (People of Correction): 'those who could distinguish between the manifest (zahir al-riwaya) and the rare and obscure (nawadir) views of the schools of their following.' (7) Muqallidun: the 'emulators', including all non-scholars. (Kamali, 387-9. See also Bilmen, I, 250-1, 324-6.) Of these seven categories, only the first three are considered to be mujtahids.

53 This is explained by Imam al-Shatibi in the context of the following passage, all of which is quoted here to furnish a further summary of the orthodox position on taqlid. 'A person obliged to follow the rules of the Shari'a must fall into one of three categories. [I] He may be a mujtahid, in which case he will practice the legal conclusions to which his ijtiḥad leads him. [II] He may be a complete muqallid, unappraised of the knowledge required. In his case, he must have a guide to lead him, and an arbitrator to give judgements for him, and a scholar to emulate. Obviously, he follows the guide only in his capacity as a man possessed of the requisite knowledge. The proof for this is that if he knows, or even suspects, that he does not in fact possess it, it is not permissible for him to follow him or to accept his judgement; in fact, no individual, whether educated or not, should think of following through taqlid someone who he knows is not qualified, in the way that a sick man should not put himself in the hands of someone whom he knows is not a doctor. [III] He may not have attained to the level of the Mujtahids, but he understands the dalil and its context, and is competent to understand it in order to prefer some rulings over others in certain questions. In his case, one must either recognize his preferences and views, or not. If they are recognized, then he becomes like a mujtahid on that issue; if they are not, then he must be classed alone with other ordinary non-specialist Muslims, who are obliged to follow Mujtahids. (al-I'tisam [Cairo, 1913-4] III, 251-3.)

An equivalent explanation of the status of the muttabi' is given by Amidi, IV, 306-7: 'If a non-scholar, not qualified to make ijtiḥad, has acquired some of the knowledge required for ijtiḥad, he must follow the verdicts of the Mujtahids. This is the view of the correct scholars, although it has been rejected by some of the Mu'tazilites in Baghdad, who state: "That is not allowable, unless he obtains a clear proof (dalil) of the correctness of the ijtiḥad he is following." But the correct view is that which we have stated, this being proved by the Koran, Ijma' and the intellect. The Koranic proof is Allah's statement, "Ask the people of remembrance if you do not know," which is a general ('amm) commandment to all. The proof by Ijma' is that ordinary Muslims in the time of the Companions and the Followers used to ask the mujtahids, and follow them in their Shari'a judgements, while the learned among them would answer their questions without indicating the dalil. They would not forbid them from doing this, and this therefore constitutes Ijma' on the absolute permissibility of an ordinary Muslim following the rulings of a mujtahid.' For Amidi's intellectual proof, see note 53 below.

54 A muqallid is a Muslim who practices taqlid, which is the Shari'a term for 'the acceptance by an ordinary person of the judgement of a mufti.' (Juwayni, §1545.) The word 'mufti' here means either a mujtahid or someone who authentically transmits the verdict of a mujtahid. 'As for the ordinary person ['ammī], it is obligatory [wajib] upon him to make taqlid of the ulema.' (Baji, §783.) The actual choice of which mujtahid an ordinary Muslim should follow is clearly a major responsibility. 'A muqallid may only make taqlid of another person after carefully examining his credentials, and obtaining reliable third-party testimony as to his scholarly attainments' (Juwayni, §1511). (Imam Ibn Furak, however holds that a mujtahid's own self-testimony is sufficient.) Imam Juwayni goes on to observe (§1515) that it is necessary to follow the best mujtahid available; which is also the position of Imam al-Baji (§794). See also Shirazi (p. 72): 'It is not permissible for someone asking for a fatwa to ask just anyone, lest he ask someone who has no knowledge of the fiqh. Instead it is obligatory (wajib) for him to ascertain the scholar's learning and trustworthiness.' And Qarafi (II, 110): 'The Salaf, may Allah be pleased with them, were intensely reluctant to give fatwas. Imam Malik said, "A scholar should not give fatwas until he is regarded as competent to do so both by himself and by others." In other words, the scholars must be satisfied of his qualifications. Imam Malik did not begin to give fatwas until he had been given permission (ijaza) to do so by forty turbaned ones [scholars].'

55 'The dalil for our position is Allah's commandment: So ask the people of remembrance, if you do not know. For if we forbade taqlid, everyone would need to become an advanced scholar, and no-one would be able [have time] to earn anything, and the earth would lie uncultivated.' (Shirazi, 71.) 'The intellectual proof [of the

them have the requisite intelligence. The Holy Quran itself states that less well-informed believers should have recourse to qualified experts: So ask the people of remembrance, if you do not know (16:43).⁵⁶ (According to the tafsir experts, the people of remembrance are the ulama.) And in another verse, the Muslims are enjoined to create and maintain a group of specialists who provide authoritative guidance for non-specialists: A band from each community should stay behind to gain instruction in religion and to warn the people when they return to them, so that they may take heed (9:122). Given the depth of scholarship needed to understand the revealed texts accurately, and the extreme warnings we have been given against distorting the Revelation, it is obvious that ordinary Muslims are duty bound to follow expert opinion, rather than rely on their own reasoning and limited knowledge. This obvious duty was well-known to the early Muslims: the Caliph Umar (r.a.) followed certain rulings of Abu Bakr (r.a.), saying I would be ashamed before God to differ from the view of Abu Bakr. And Ibn Masud (r.a.), in turn, despite being a mujtahid in the fullest sense, used in certain issues to follow Umar (r.a.). According to al-Shabi: Six of the Companions of the Prophet (pbuh) used to give fatwas to the people: Ibn Masud, Umar ibn al-Khattab, Ali, Zayd ibn Thabit, Ubayy ibn Kab, and Abu Musa (al-Ashari). And out of these, three would abandon their own judgements in favour of the judgements of three others: Abdallah (ibn Masud) would abandon his own judgement for the judgement of Umar, Abu Musa would abandon his own judgement for the judgement of Ali, and Zayd would abandon his own judgement for the judgement of Ubayy ibn Kab.⁵⁷

need for taqlid] is that if an issue of the furu` arises for someone who does not possess the qualifications for ijtiḥad then he will either not adopt an Islamic ruling at all, and this is a violation of the Ijma`, or, alternatively, he will adopt an Islamic ruling, either by investigating the proofs involved, or by taqlid. But an adequate investigation of the proofs is not possible for him, for it would oblige him, and all humanity, fully to investigate the dalils pertaining to the issues, thereby distracting them from their sources of income, and leading to the extinction of crafts and the ruin of the world.' (Amidi, *Ihkam*, IV, 307-8.) 'One of the dalils for the legitimacy of following the verdicts of the scholars is our knowledge that anyone who looks into these discussions and seeks to deduce rulings of the Shari'a will need to have the right tools, namely, the science of the rulings of the Koran and Sunna and *usul al-fiqh*, the principles of rhetoric and the Arabic language, and other sciences which are not easily acquired, and which most people cannot attain to. And even if some of them do attain to it, they only do so after long study, investigation and very great effort, which would require that they devote themselves entirely to this and do nothing else; and if ordinary people were under the obligation to do this, there would be no cultivation, commerce, or other employments which are essential for the continuance of humanity - and it is the *ijma`* of the Umma that this is something which Allah ta'ala has not obliged His slaves to do. ... There is therefore no alternative for them to following the ulema.' (Baji, §793.)

56 'There is *ijma`* among the scholars that this verse is a commandment to whoever does not know a ruling or the dalil for it to follow someone who does. Almost all the scholars of *usul al-fiqh* have made this verse their principle dalil that it is obligatory for an ordinary person to follow a scholar who is a mujtahid.' (al-Buti, 71; translated also in Keller, 17.)

57 See also Dajawi, II, 576: 'The Companions and Followers used to give fatwas on legal issues to those who asked for them. At times they would mention the source, if this was necessary, while at other times they would limit themselves to specifying the ruling.' Al-Ghazali (*Mustasfa*, II, 385) explains that the existence of taqlid and fatwa among the Companions is a dalil for the necessity of this fundamental distinction: 'The proof that taqlid is obligatory is the *ijma`* of the Companions. For they used to give fatwas to the ordinary people and did not command them to acquire the degree of ijtiḥad for themselves. This is known necessarily (*bi'l-darura*) and by parallel lines of transmission (*tawatur*) from both the scholars and the non-scholars among them.' See also Ibn Khaldun, *Muqaddima* (Bulaq ed., p. 216): 'Not all the Companions were qualified to give fatwas, and Islam was not taken from all of them. That privilege was held only by those who had learnt the Koran, knew what it contained by what of abrogated and abrogating passages, ambiguous (*mutashabih*) and perspicuous (*muhkam*) expressions, and its other special features.' And also Imam al-Baji (§793): 'Ordinary Muslims have no alternative but to follow the Ulema. One proof of this is the *ijma`* of the Companions, for those among them who had not attained the degree of ijtiḥad used to ask the ulema of the Companions for the correct ruling on something which happened to them. Not one of the Companions criticized them for so doing; on the contrary, they gave them fatwas on the issues they had asked about, without condemning them or telling them to derive the rulings themselves [from the Koran and Sunna].' See also Imam al-Amidi: in note 49 above.

A list of the muftis among the Companions is given by Juwayni (§§1494-9); they include the Four Khalifas, Talha ibn `Ubaydillah, `Abd al-Rahman ibn `Awf, and Sa'd ibn Abi Waqqas. Others were not muftis, such as Abu Hurayra, who despite his many narrations of hadiths was never known for his judgements (§1497). Shirazi (p. 52) confirms the obvious point that some Companions are considered more worthy of being followed in legal matters than others.

This verdict, namely that one is well-advised to follow a great Imam as one's guide to the Sunnah, rather than relying on oneself, is particularly binding upon Muslims in countries such as Britain, among whom only a small percentage is even entitled to have a choice in this matter. This is for the simple reason that unless one knows Arabic,⁵⁸ then even if one wishes to read all the hadith determining a particular issue, one cannot. For various reasons, including their great length, no more than ten of the basic hadith collections have been translated into English. There remain well over three hundred others, including such seminal works as the Musnad of Imam Ahmad ibn Hanbal,⁵⁹ the Musannaf of Ibn Abi Shayba,⁶⁰ the Sahih of Ibn Khuzayma,⁶¹ the Mustadrak of al-Hakim,⁶² and many other multi-volume collections, which contain large numbers of sound hadiths which cannot be found in Bukhari, Muslim, and the other works that have so far been translated. Even if we assume that the existing translations are entirely accurate, it is obvious that a policy of trying to derive the Shariah directly from the Book and the Sunnah cannot be attempted by those who have no access to the Arabic. To attempt to discern the Shariah merely on the basis of the hadiths which have been translated will be to ignore and amputate much of the Sunnah, hence leading to serious distortions.⁶³

Let me give just two examples of this. The Sunni Madhhab, in their rules for the conduct of legal cases, lay down the principle that the canonical punishments (hudud) should not be applied in cases where there is the least ambiguity, and that the qadi should actively strive to prove that such ambiguities exist. An amateur reading in the Sound Six collections will find no confirmation of this.⁶⁴ But the madhhab ruling is based on a hadith narrated by a sound chain, and recorded in the Musannaf of Ibn Abi Shayba, the Musnad of al-Harithi, and the Musnad of Musaddad ibn Musarhad. The text is: "Ward off the hudud by means of ambiguities."⁶⁵ Imam al-Sanani, in his book Al-Ansab, narrates the circumstances of this hadith: "A man was found drunk, and was brought to Umar, who ordered the hadd of eighty lashes to be applied. When this had been done, the man said: Umar, you have wronged me! I am a slave! (Slaves receive only half the punishment.) Umar was grief-stricken at this, and recited the Prophetic hadith, Ward off the hudud by means of ambiguities."⁶⁶

Another example is provided by the practice of istighfar for others during the Hajj. According to a hadith, 'Forgiveness is granted to the Hajji, and to those for whom the Hajji prays.' This hadith is not related in any of the collections so far translated into English; but it is narrated, by a sound isnad, in many other collections, including

58 As we have seen above, the ulema regard a mastery of the Arabic language as one of the essential qualifications for deriving the Shari'a directly from the Koran and Sunna. See Juwayni, §§70-216, where this is stressed. Juwayni records that Imam al-Shafi'i was so expert in the Arabic language, grammar and rhetoric that at a very young age he was consulted by the great philologist al-Asma'i, who asked his help in editing some early and very difficult collections of Arabic poetry. (Juwayni, §1501.) We also learn that Imam Ibn al-Mubarak, the famous traditionalist of Merv, spent more money on learning Arabic than on traditions [hadith], attaching more importance on the former than the latter, and asking the students of hadith to spend twice as long on Arabic than on hadith ... al-Asma'i held that someone who studied hadith without learning grammar was to be categorized with the forgers of hadith.' (Siddiqi, 84-5.)

59 Published in 6 volumes in Cairo in 1313 AH. Another work by him, the Kitab al-Zuhd (Beirut, 1403), also contains many hadiths.

60 Published in 13 volumes in Bombay between 1386 and 1390.

61 Edited by M.M. al-A'zami, Beirut, 1391-97.

62 This is an important collection of hadiths whose accuracy Imam al-Hakim al-Nisaburi considered to meet the criteria of Imams al-Bukhari and Muslim, but which had not been included in their collections. Published in four large volumes in Hyderabad between 1334-1342.

63 Needless to say, the amateurs who deny taqlid and try to derive the rulings for themselves are even more ignorant of the derivative sources of Shari'a than they are of the Koran and Sunna. These other sources do not only include the famous ones such as ijma' and qiyas. For instance, the fatwas of the Companions are considered by the ulema to be a further important source of legislation. 'Imam al-Shafi'i throughout his life taught that diya (bloodmoney) was increased in cases of crimes committed in the Haramayn or the Sacred Months, and he had no basis for this other than the statements of the Companions.' (Juwayni, §1001.)

64 There is a version of this hadith in Tirmidhi (Hudu, 2), but attached to an isnad which includes Yazid ibn Ziyad, who is weak.

65 Ibn Abi Shayba, Musannaf, XI, 70.

66 Sakhawi, 74-5.

Another example pertains to the important practice, recognised by the madhhabs, of performing sunnah prayers as soon as possible after the end of the Maghrib obligatory prayer. The hadith runs: Make haste to perform the two rakas after the Maghrib, for they are raised up (to Heaven) alongside the obligatory prayer. The hadith is narrated by Imam Razin in his Jami.

Because of the traditional pious fear of distorting the Law of Islam, the overwhelming majority of the great scholars of the past – certainly well over ninety-nine percent of them – have adhered loyally to a madhhab.⁶⁸ It is true that in the troubled fourteenth century a handful of dissenters appeared, such as Ibn Taymiyyah and Ibn al-Qayyim;⁶⁹ but even these individuals never recommended that semi-educated Muslims should attempt ijtihad without expert help. And in any case, although these authors have recently been resurrected and made prominent, their influence on the orthodox scholarship of classical Islam was negligible, as is suggested by the small number of manuscripts of their works preserved in the great libraries of the Islamic world.⁷⁰

Nonetheless, social turbulences have in the past century thrown up a number of writers who have advocated the abandonment of authoritative scholarship. The most prominent figures in this campaign were Muhammad Abduh and his pupil Muhammad Rashid Rida.⁷¹ Dazzled by the triumph of the West, and informed in subtle ways by their

67 Sakhawi, 742.

68 For a complete list of the most famous scholars of Islam, and the madhhabs to which they belonged see Sayf al-Din Ahmad, *Al-Albani Unveiled*, 97-9.

69 For these writers see Ahmad ibn al-Naqib al-Misri, tr. Nuh Keller, *Reliance of the Traveller* (Abu Dhabi, 1991), 1059-60, 1057-9. The attitude of Ibn al-Qayyim is not consistent on this issue. In some passages of his *I`lam al-Muwaqqi`in* he seems to suggest that any Muslim is qualified to derive rulings directly from the Koran and Sunna. But in other passages he takes a more intelligent view. For instance, he writes: 'Is it permissible for a mufti who adheres to the madhhab of his Imam to give a fatwa in accordance with a different madhhab if that is more correct in his view? [The answer is] if he is [simply] following the principles of that Imam in procedures of ijtihad and ascertaining the proof-texts [i.e. is a mujtahid fi'l-madhhab], then he is permitted to follow the view of another mujtahid which he considers correct.' (*I`lam al-Muwaqqi`in*, IV, 237.) This is a broad approach, but is nonetheless very far from the notion of simply following the 'dalil' every time rather than following a qualified interpreter. This quote and several others are given by Shaykh al-Buti to show the various opinions held by Ibn al-Qayyim on this issue, which, according to the Shaykh, reveal 'remarkable contradictions'. (Al-Buti, 56-60.)

70 Many of Ibn Taymiya's works exist only as single manuscripts; and even the others, when compared to the works of the great scholars such as al-Suyuti and al-Nawawi, seem to have been copied only very rarely. See the list of ancient manuscripts of his works given by C. Brockelmann, *Geschichte der arabischen Litteratur* (2nd. Ed. Leiden, 1943-9), II, 126-7, Supplement, II, 119-126.

71 `Abduh, in turn, was influenced by his teacher and collaborator Jamal al-Din al-Afghani (1839-97). Afghani was associated with that transitional 'Young Ottoman' generation which created the likes of Namik Kemal and (somewhat later) Zia Gokalp and Sati` al-Husari: men deeply traumatized by the success of the Western powers and the spectacle of Ottoman military failure, and who sought a cultural renewal by jettisoning historic Muslim culture while maintaining authenticity by retaining a 'pristine essence'. In this they were inspired, consciously or otherwise, by the wider 19th century quest for authenticity: the nationalist philosophers Herder and Le Bon, who had outlined a similar revivalist-essentialist project for France and Germany based on the 'original sources' of their national cultures, had been translated and were widely read in the Muslim world at the time. Afghani was not a profound thinker, but his pamphlets and articles in the journal which he and `Abduh edited, *al-Urwat al-Wuthqa*, were highly influential. Whether he believed in his own pan-Islamic ideology, or indeed in his attenuated and anti-historicist version of Islam, is unclear. When writing in contexts far from his Muslim readership he often showed an extreme scepticism. For instance, in his debate with Renan concerning the decline of Arab civilization, he wrote of Islam: 'It is clear that where-ever it becomes established, this religion tried to stifle the sciences and it was marvellously served in its designs by despotism.' (Reply to Renan, translated by N. Keddie in *An Islamic Response to Imperialism: Political and Religious Writings of Sayyid Jamal al-Din 'al-Afghani'* (Berkeley and Los Angeles, 1968), 183, 187. It is hardly surprising that `Abduh should have worked so hard to suppress the Arabic translation of this work!

Afghani's reformist ideology led him to found a national political party in Egypt, *al-Hizb al-Watani*, including not only Muslims, but in which 'all Christians and Jews who lived in the land of Egypt were eligible for membership.' (Jamal Ahmed, *The Intellectual Origins of Egyptian Nationalism* (London, 1960), 16.) This departure from

own well-documented commitment to Freemasonry, these men urged Muslims to throw off the shackles of taqlid, and to reject the authority of the Four Schools. Today in some Arab capitals, especially where the indigenous tradition of orthodox scholarship has been weakened, it is common to see young Arabs filling their homes with every hadith collection they can lay their hands upon, and poring over them in the apparent belief that they are less likely to misinterpret this vast and complex literature than Imam al-Shafi'i, Imam Ahmad, and the other great Imams. This irresponsible approach, although still not widespread, is predictably opening the door to sharply divergent opinions, which have seriously damaged the unity, credibility and effectiveness of the Islamic movement, and provoked sharp arguments over issues settled by the great Imams over a thousand years ago.⁷² It is common now to see young activists prowling the mosques, criticising other worshippers for what they believe to be defects in their worship, even when their victims are following the verdicts of some of the great Imams of Islam. The unpleasant, Pharisaic atmosphere generated by this activity has the effect of discouraging many less committed Muslims from attending the mosque at all. No-one now recalls the view of the early ulama, which was that Muslims should tolerate divergent interpretations of the Sunnah as long as these interpretations have been held by reputable scholars. As Sufyan al-Thawri said: 'If you see a man doing something over which there is a debate among the scholars, and which you yourself believe to be forbidden, you should not forbid him from doing it.'⁷³ The alternative to this

traditional Islamic notions of solidarity can be seen as a product of Afghani's specific attitude to taqlid. But his pupil's own fatwas were often far more radical, perhaps because 'Abduh's 'partiality for the British authority which pursued similar lines of reform and gave him support' (Ahmed, 35). We are not surprised to learn that the British governor of Egypt, Lord Cromer, wrote: 'For many years I gave to Mohammed Abdu all the encouragement in my power' (Lord Cromer, *Modern Egypt* [New York, 1908], II, 180). An example is the declaration in 'Abduh's tafsir (much of which is by Rida) that the erection of statues is halal. The same argument was being invoked by Ataturk, who, when asked why he was erecting a statue of himself in Ankara, claimed that 'the making of statues is not forbidden today as it was when Muslims were just out of idolatry, and that it is necessary for the Turks to practice this art, for it is one of the arts of civilization'. (C. Adams, *Islam and Modernism in Egypt* [London, 1933], 193-4.)

72 A poorly-argued but well-financed example of a book in this category is a short text by the Saudi writer al-Khajjadi, of which an amended version exists in English. This text aroused considerable concern among the ulema when it first appeared in the 1960s, and Shaykh Sa'id Ramadan al-Buti's book was in fact written specifically in refutation of it. The second and subsequent editions of al-Buti's work, which shows how Khajjadi systematically misquoted and distorted the texts, contain a preface which includes an account of a meeting between al-Buti and the Albanian writer Nasir al-Din al-Albani, who was associated with Khajjadi's ideas. The three-hour meeting, which was taped, was curious inasmuch as al-Albani denied that Khajjadi was stating that all Muslims can derive rulings directly from the Koran and Sunna. For instance where Khajjadi makes the apparently misleading statement that 'As for the Madhhabs, these are the views and ijtihaads of the ulema on certain issues; and neither Allah nor His messenger have compelled anyone to follow them,' Al-Albani explains that 'anyone' (ahad) here in fact refers to 'anyone qualified to make ijtihaad'. (Al-Buti, 13.) Al-Albani went on to cite several other instances of how readers had unfortunately misunderstood Khajjadi's intention. Shaykh al-Buti, quite reasonably, replied to the Albanian writer: 'No scholar would ever use language in such a loose way and make such generalizations, and intend to say something so different to what he actually and clearly says; in fact, no-one would understand his words as you have interpreted them.' Albani's response was: 'The man was of Uzbek origin, and his Arabic was that of a foreigner, so he was not able to make himself as clear as an Arab would. He is dead now, and we should give him the benefit of the doubt and impose the best interpretation we can on his words!' (al-Buti, 14.) But al-Albani, despite his protestations, is reliably said to believe even now that taqlid is unacceptable. Wa-la hawla wa-la quawwata illa bi'Llah.

73 The ulema also quote the following guiding principles of Islamic jurisprudence: 'That which is wrong (munkar) need not be condemned as [objectively] wrong unless all scholars agree (in ijma') that it is so.' (Dajawi, II, 583.) Imam al-Dajawi (II, 575) also makes the following points: 'The differences of opinion among the ulema are a great mercy (rahma) upon this Umma. 'Umar ibn 'Abd al-'Aziz declared: "It would not please me if the Companions of Muhammad, upon whom be blessings and peace, had not disagreed, for had they not done so, no mercy would have come down." Yahya ibn Sa'id, one of the great hadith narrators among the Followers (Tabi'un), said: "The people of knowledge are a people of broadness (ahl tawsi'a). They continue to give fatwas which are different from each other, and no scholar reproaches another scholar for his opinion." However, if ordinary people took their rulings straight from the Koran and Sunna, as a certain faction desires, their opinions would be far more discordant than this, and the Four Schools would no longer be four, but thousands. Should that day come, it will bring disaster upon disaster for the Muslims - may we never live to see it!' One could add that 'that day' seems already to be upon us, and that the resulting widening of the argument on even the most simple juridical matters is no longer tempered by the erstwhile principles of politeness and

policy is, of course, a disunity and rancour which will poison and cripple the Muslim community from within.⁷⁴

In a Western-influenced global culture in which people are urged from early childhood to think for themselves and to challenge established authority, it can sometimes be difficult to muster enough humility to recognise one's own limitations.⁷⁵ We are all a little like Pharaoh: our egos are by nature resistant to the idea that anyone else might

toleration. The fiercely insulting debate between Nasir al-Din al-Albani and the Saudi writer al-Tuwayjiri is a typical instance. The former writer, in his book *Hijab al-Mar'a al-Muslima*, uses the Koran and Sunna to defend his views that a woman may expose her face in public; while the latter, in his *al-Sarim al-Mashhur 'ala Ahl al-Tabarruj wa'l-Sufur*, attacks Albani in the most vituperative terms for failing to draw from the revealed sources and supposedly obvious conclusion that women must always veil their faces from non-mahram men. Other example of this bitter hatred generation by the non-Madhab style of discord, based in attempts at direct *istinbat*, are unfortunately many. Hardly any mosque or Islamic organization nowadays seems to be free of them.

The solution is to recall the principle referred to above, namely that two mujtahids can hold differing opinions on the *furu'*, and still be rewarded by Allah, while both opinions will constitute legitimate *fiqh*. (Juwayni, §§1455-8; Bilmen, I, 249.) This is clearly indicated in the Koranic verses: 'And Daud and Sulayman, when they gave judgement concerning the field, when people's sheep had strayed and browsed therein by night; and We were witness to their judgement. We made Sulayman to understand [the case]; and unto each of them We gave judgement and knowledge.' (21:78-9) The two Prophets, upon them be peace, had given different fatwas; and Sulayman's was the more correct, but as Prophets they were infallible (*ma'sum*), and hence Daud's judgement was acceptable also.

Understanding this is the key to recreating the spirit of tolerance among Muslims. Shaykh Omer Bilmen summarizes the jurists' position as follows: 'The fundamentals of the religion, namely basic doctrine, the obligatory status of the forms of worship, and the ethical virtues, are the subject of universal agreement, an agreement to which everyone is religiously obliged to subscribe. Those who diverge from the rulings accepted by the overwhelming majority of ordinary Muslims are considered to be the people of *bid'a* and misguidance, since the *dalils* (proof-texts) establishing them are clear. But it is not a violation of any Islamic obligation for differences of opinion to exist concerning the *furu'* (branches) and *juz'iyat* (secondary issues) which devolve from these basic principles. In fact, such differences are a necessary expression of the Divine wisdom.' (Bilmen, I, 329.)

A further point needs elucidating. If the jurists may legitimately disagree, how should the Islamic state apply a unified legal code throughout its territories? Clearly, the law must be the same everywhere. Imam al-Qarafi states the answer clearly: 'The head of state gives a judgement concerning the [variant rulings which have been reached by] *ijtihad*, and this does away with the disagreement, and obliges those who follow *ijtihad* verdicts which conflict with the head of state's to adopt his verdict.' (Qarafi, II, 103; affirmed also in Amidi, IV, 273-4.) Obviously this is a counsel specifically for *qadis*, and applies only to questions of public law, not to rulings on worship.

74 This was understood as early as the 18th century. Al-Buti quotes Shah Waliullah al-Dahlawi (Hujjat Allah al-Baligha, I, 132) as observing: 'The Umma up to the present date ... has unanimously agreed that these four recorded *madhhabs* may be followed by way of *taqlid*. In this there are manifest benefits and advantages, especially in these days in which enthusiasm has dimmed greatly, and souls have been given to drink of their own passions, so that everyone with an opinion is delighted with his opinion.' This reminds us that Islam is not a totalitarian religion which denies the possibility and legitimacy of variant opinions. The Muslim scholars are agreed that the mujtahid cannot incur a sin in regard to his legitimate *ijtihad* exercised to derive judgements of *Shari'a*. [Only the likes of] Bishr al-Marisi, Ibn 'Aliyya, Abu Bakr al-Asamm and the deniers of *qiyas*, such as the Mu'tazilites and the Twelver Shi'a, believe that there is only one true ruling in each legal issue, so that whoever does not attain to it is a sinner.' (Amidi, IV, 244.) This is of course an aspect of the Divine mercy, and a token of the sane and generous breadth of Islam. 'Allah desires ease for you, not difficulty.' (Koran, 2:185) 'I am sent to make things easy, not to make them more difficult.' (Bukhari, 'Ilm, 12.) 'Never was Allah's Messenger, may blessings and peace be upon him, given the choice between two options but that he chose the easier of them, unless it was a sin.' (Bukhari, *Manaqib*, 23.) But the process lamented in Dahlawi's day, by which people simply ignored this Sunna principle, has nowadays become far more poisonous. What is particularly damaging is that egos have become so powerful that the old Muslim *adab* of polite tolerance during debate has been lost in some circles, as people find it hard to accept that other Muslims might hold opinions that differ from their own. It must be realized that if Allah tells Musa (upon him be peace) to speak 'gently' to Pharaoh (20:43), and commands us 'not to debate with the People of the Book save in a most excellent way,' (29:46) then how much more important must it be to debate politely with people who are neither Pharaohs nor Christians, but are of our own religion?

75 Probably because of an underlying insecurity, many young Muslim activists cannot bear to admit that

be much more intelligent or learned than ourselves. The belief that ordinary Muslims, even if they know Arabic, are qualified to derive rulings of the Shariah for themselves, is an example of this egotism running wild. To young people proud of their own judgement, and unfamiliar with the complexity of the sources and the brilliance of authentic scholarship, this can be an effective trap, which ends by luring them away from the orthodox path of Islam and into an unintentional agenda of provoking deep divisions among the Muslims. The fact that all the great scholars of the religion, including the hadith experts, themselves belonged to madhhabs, and required their students to belong to madhhabs, seems to have been forgotten. Self-esteem has won a major victory here over common sense and Islamic responsibility.⁷⁶

The Holy Quran commands Muslims to use their minds and reflective capacities; and the issue of following qualified scholarship is an area in which this faculty must be very carefully deployed. The basic point should be appreciated that no categorical difference exists between *usul al-fiqh* and any other specialised science requiring lengthy training. Shaykh Sa'id Ramadan al-Buti, who has articulated the orthodox response to the anti-Madhhab trend in his book: *Non-Madhhabism: The Greatest Bida Threatening the Islamic Shari'a*, likes to compare the science of deriving rulings to that of medicine. "If one's child is seriously ill", he asks, "does one look for oneself in the medical textbooks for the proper diagnosis and cure, or should one go to a trained medical practitioner?" Clearly, sanity dictates the latter option. And so it is in matters of religion, which are in reality even more important and potentially hazardous: we would be both foolish and irresponsible to try to look through the sources ourselves, and become our own muftis. Instead, we should recognise that those who have spent their entire lives studying the Sunnah and the principles of law are far less likely to be mistaken than we are.⁷⁷

Another metaphor might be added to this, this time borrowed from astronomy. We might compare the Quranic verses and the hadiths to the stars. With the naked eye, we are unable to see many of them clearly; so we need a telescope. If we are foolish, or proud, we may try to build one ourselves. If we are sensible and modest, however, we will be happy to use one built for us by Imam al-Shafi'i or Ibn Hanbal, and refined, polished and improved by generations of great astronomers. A madhhab is, after all, nothing more than a piece of precision equipment enabling us to see Islam with the maximum clarity possible. If we use our own devices, our amateurish attempts will inevitably distort our vision.

they might not know something about their religion. And this despite the example of Imam Malik, who, when asked forty questions about *fiqh*, answered 'I do not know' (*la adri*) to thirty-six of them. (Amidi, IV, 221; Bilmen, I, 239.) How many egos nowadays can bear to admit ignorance even once? They should remember the saying: 'He who makes most haste to give a fatwa, makes most haste to the Fire.' (Bilmen, I, 255.) Imam al-Subki condemns 'those who make haste to give fatwas, relying on the apparent meaning of the [revealed] phrases without thinking deeply about them, thereby dragging other people into ignorance, and themselves into the agonies of the Fire.' (Taj al-Din al-Subki, *Mu'id al-Ni'am wa-Mubid al-Niqam* (Brill, 1908), 149. Even Imam al-Sha'bi (d.103), out of his modesty and adab, and his awareness of the great complexity of the *fiqh*, did not consider himself a mufti, only a *naqil* (transmitter of texts). (Bilmen, I, 256.)

76 Cf. Imam al-Dajawi, II, 579: 'By Allah, this view (that ordinary people should not follow madhhabs) is nothing less than an attempt to fling the door wide open for people's individual preferences, thereby turning the Book and the Sunna into playthings to be manipulated by those deluded fools, driven by their compounded ignorance and their corrupt imaginings. It is obvious that personal preferences vary enormously, and that ignorant people will arrive at their conclusions on the basis of their own emotions and imaginings. So what will be the result if we put them in authority over the Shari'a, so that they are able to interpret it in the light of their own opinions, and play with it according to their preferences?'

77 Buti, 107-8. The same image is used by Imran Nyazee: 'Taqlid, as distinguished from blind conversatism, is the foundation of all relationships based on trust, like those between a patient and his doctor, a client and his lawyer, and a business and its accountant. It is a legal method for ensuring that judges who are not fully-qualified mujtahids may be able to decide cases in the light of precedents laid down by independent jurists ... The system of taqlid implies that as long as the layman does not get the training for becoming a doctor he cannot practice medicine, for example. In the case of medicine such a person may be termed a quack and may even be punished today, but in the case of Islamic law he is assuming a much graver responsibility: he is claiming that the opinion he is expressing is the law intended by Allah.' (Introduction to *The Distinguished Jurist's Primer*, xxxv.)

A third image might also be deployed. An ancient building, for instance the Blue Mosque in Istanbul, might seem imperfect to some who worship in it. Young enthusiasts, burning with a desire to make the building still more exquisite and well-made (and no doubt more in conformity with their own time-bound preferences), might gain access to the crypts and basements which lie under the structure, and, on the basis of their own understanding of the principles of architecture, try to adjust the foundations and pillars which support the great edifice above them. They will not, of course, bother to consult professional architects, except perhaps one or two whose rhetoric pleases them nor will they be guided by the books and memoirs of those who have maintained the structure over the centuries. Their zeal and pride leaves them with no time for that. Groping through the basements, they bring out their picks and drills, and set to work with their usual enthusiasm.

There is a real danger that Sunni Islam is being treated in a similar fashion. The edifice has stood for centuries, withstanding the most bitter blows of its enemies. Only from within can it be weakened. No doubt, Islam has its intelligent foes among whom this fact is well-known. The spectacle of the disunity and fitnas which divided the early Muslims despite their superior piety, and the solidity and cohesiveness of Sunnism after the final codification of the Shariah in the four Schools of the great Imams, must have put ideas into many a malevolent head. This is not to suggest in any way that those who attack the great madhhabs are the conscious tools of Islam's enemies. But it may go some way to explaining why they will continue to be well-publicised and well-funded, while the orthodox alternative is starved of resources. With every Muslim now a proud mujtahid, and with taqlid dismissed as a sin rather than a humble and necessary virtue, the divergent views which caused such pain in our early history will surely break surface again. Instead of four madhhabs in harmony, we will have a billion madhhabs in bitter and self-righteous conflict. No more brilliant scheme for the destruction of Islam could ever have been devised.⁷⁸

78 It hardly needs adding, as a final observation, that nothing in all the above should be understood as an objection to the extension and development of the fiqh in response to modern conditions. Much serious ijtiḥād is called for; the point being made in this paper is simply that such ijtiḥād must be carried out by scholars qualified to do so.

Why Muslims Follow Madhhabs⁷⁹

By Shaykh Nuh Keller

The work of the mujtahid Imams of Sacred Law, those who deduce shari'a rulings from Qur'an and hadith, has been the object of my research for some years now, during which I have sometimes heard the question: "Who needs the Imams of Sacred Law when we have the Qur'an and hadith? Why can't we take our Islam from the word of Allah and His Messenger (Allah bless him and give him peace), which are divinely protected from error, instead of taking it from the madhhabs or "schools of jurisprudence" of the mujtahid Imams such as Abu Hanifa, Malik, Shafi'i, and Ahmad, which are not?"

It cannot be hidden from any of you how urgent this issue is, or that many of the disagreements we see and hear in our mosques these days are due to lack of knowledge of fiqh or "Islamic jurisprudence" and its relation to Islam as a whole. Now, perhaps more than ever before, it is time for us to get back to basics and ask ourselves how we understand and carry out the commands of Allah.

We will first discuss the knowledge of Islam that all of us possess, and then show where fiqh enters into it. We will look at the qualifications mentioned in the Qur'an and sunna for those who do fiqh, the mujtahid scholars. We will focus first on the extent of the mujtahid scholar's knowledge—how many hadiths he has to know, and so on—and then we will look at the depth of his knowledge, through actual examples of dalils or "legal proofs" that demonstrate how scholars join between different and even contradictory hadiths to produce a unified and consistent legal ruling.

We will close by discussing the mujtahid's relation to the science of hadith authentication, and the conditions by which a scholar knows that a given hadith is sahih or "rigorously authenticated," so that he can accept and follow it.

Qur'an and Hadith. The knowledge that you and I take from the Qur'an and the hadith is of several types: the first and most important concerns our faith, and is the knowledge of Allah and His attributes, and the other basic tenets of Islamic belief such as the messengerhood of the Prophet (Allah bless him and give him peace), the Last Day, and so on. Every Muslim can and must acquire this knowledge from the Book of Allah and the sunna.

This is also the case with a second type of general knowledge, which does not concern faith, however, but rather works: the general laws of Islam to do good, to avoid evil, to perform the prayer, pay zakat, fast Ramadan, to cooperate with others in good works, and so forth. Anyone can learn and understand these general rules, which summarize the sirat al-mustaqim or "straight path" of our religion.

Fiqh. A third type of knowledge is of the specific details of Islamic practice. Whereas anyone can understand the first two types of knowledge from the Qur'an and hadith, the understanding of this third type has a special name, fiqh, meaning literally "understanding." And people differ in their capacity to do it.

I had a visitor one day in Jordan, for example, who, when we talked about why he hadn't yet gone on hajj, mentioned the hadith of Anas ibn Malik that

the Messenger of Allah (Allah bless him and give him peace) said, "Whoever prays the dawn prayer (fajr) in a group and then sits and does dhikr until the sun rises, then prays two rak'as, shall have the like of the reward of a hajj and an 'umra." Anas said, "The Prophet (Allah bless him and give him peace) said: 'Completely, completely, completely'" (Tirmidhi, 2.481).

My visitor had done just that this very morning, and he now believed that he had fulfilled his obligation to perform the hajj, and had no need to go to Mecca. The hadith was well authenticated (hasan). I distinguished for my visitor

between having the reward of something, and lifting the obligation of Islam by actually doing it, and he saw my point.

But there is a larger lesson here, that while the Qur'an and the sunna are ma'sum or "divinely protected from error," the understanding of them is not. And someone who derives rulings from the Qur'an and hadith without training in ijtihad or "deduction from primary texts" as my visitor did, will be responsible for it on the Day of Judgment, just as an amateur doctor who had never been to medical school would be responsible if he performed an operation and somebody died under his knife.

Why? Because Allah has explained in the Qur'an that fiqh, the detailed understanding of the divine command, requires specially trained members of the Muslim community to learn and teach it. Allah says in surat al-Tawba:

"Not all of the believers should go to fight. Of every section of them, why does not one part alone go forth, that the rest may gain understanding of the religion, and to admonish their people when they return, that perhaps they may take warning" (Qur'an 9:122)

—where the expression li yatafaqqahu fi al-din, "to gain understanding of the religion," is derived from precisely the same root (f-q-h) as the word fiqh or "jurisprudence," and is what Western students of Arabic would call a "fifth-form verb" (tafa'ala), which indicates that the meaning contained in the root, understanding, is accomplished through careful, sustained effort.

This Qur'anic verse establishes that there should be a category of people who have learned the religion so as to be qualified in turn to teach it. And Allah has commanded those who do not know a ruling in Sacred Law to ask those who do, by saying in surat al-Nahl,

"Ask those who recall if you know not" (Qur'an 16:43),

in which the words "those who recall," ahl al-dhikri, indicate those with knowledge of the Qur'an and sunna, at their forefront the mujtahid Imams of this Umma. Why? Because, first of all, the Qur'an and hadith are in Arabic, and as a translator, I can assure you that it is not just any Arabic.

To understand the Qur'an and sunna, the mujtahid must have complete knowledge of the Arabic language in the same capacity as the early Arabs themselves had before the language came to be used by non-native speakers. This qualification, which almost no one in our time has, is not the main subject of my essay, but even if we did have it, what if you or I, though not trained specialists, wanted to deduce details of Islamic practice directly from the sources? After all, the Prophet (Allah bless him and give him peace) has said, in the hadith of Bukhari and Muslim: "When a judge gives judgement and strives to know a ruling (ijtihad) and is correct, he has two rewards. If he gives judgement and strives to know a ruling, but is wrong, he has one reward" (Bukhari, 9.133).

The answer is that the term ijtihad or "striving to know a ruling" in this hadith does not mean just any person's efforts to understand and operationalize an Islamic ruling, but rather the person with sound knowledge of everything the Prophet (Allah bless him and give him peace) taught that relates to the question. Whoever makes ijtihad without this qualification is a criminal. The proof of this is the hadith that the Companion Jabir ibn 'Abdullah said:

We went on a journey, and a stone struck one of us and opened a gash in his head. When he later had a wet-dream in his sleep, he then asked his companions, "Do you find any dispensation for me to perform dry ablution (tayammum)?" [Meaning instead of a full purificatory bath (ghusl).] They told him, "We don't find any dispensation for you if you can use water."

So he performed the purificatory bath and his wound opened and he died. When we came to the Prophet

(Allah bless him and give him peace), he was told of this and he said: “They have killed him, may Allah kill them. Why did they not ask?—for they didn’t know. The only cure for someone who does not know what to say is to ask” (Abu Dawud, 1.93).

This hadith, which was related by Abu Dawud, is well authenticated (hasan), and every Muslim who has any taqwa should reflect on it carefully, for the Prophet (Allah bless him and give him peace) indicated in it—in the strongest language possible—that to judge on a rule of Islam on the basis of insufficient knowledge is a crime. And like it is the well authenticated hadith “Whoever is given a legal opinion (fatwa) without knowledge, his sin is but upon the person who gave him the opinion” (Abu Dawud, 3.321).

The Prophet (Allah bless him and give him peace) also said:

Judges are three: two of them in hell, and one in paradise. A man who knows the truth and judges accordingly, he shall go to paradise. A man who judges for people while ignorant, he shall go to hell. And a man who knows the truth but rules unjustly, he shall go to hell (Sharh al-sunna, 10.94).

This hadith, which was related by Abu Dawud, Tirmidhi, Ibn Majah, and others, is rigorously authenticated (sahih), and any Muslim who would like to avoid the hellfire should soberly consider the fate of whoever, in the words of the Prophet (Allah bless him and give him peace), “judges for people while ignorant.”

Yet we all have our Yusuf ‘Ali Qur’ans, and our Sahih al-Bukhari translations. Aren’t these adequate scholarly resources?

These are valuable books, and do convey perhaps the largest and most important part of our din: the basic Islamic beliefs, and general laws of the religion. Our discussion here is not about these broad principles, but rather about understanding specific details of Islamic practice, which is called precisely fiqh. For this, I think any honest investigator who studies the issues will agree that the English translations are not enough. They are not enough because understanding the total Qur’an and hadith textual corpus, which comprises what we call the din, requires two dimensions in a scholar: a dimension of breadth, the substantive knowledge of all the texts; and a dimension of depth, the methodological tools needed to join between all the Qur’anic verses and hadiths, even those that ostensibly contradict one another.

Knowledge of Primary Texts. As for the breadth of a mujtahid’s knowledge, it is recorded that Imam Ahmad ibn Hanbal’s student Muhammad ibn ‘Ubaydullah ibn al-Munadi heard a man ask him [Imam Ahmad]: “When a man has memorized 100,000 hadiths, is he a scholar of Sacred Law, a faqih?” And he said, “No.” The man asked, “200,000 then?” And he said, “No.” The man asked, “Then 300,000?” And he said, “No.” The man asked, “400,000?” And Ahmad gestured with his hand to signify “about that many” (Ibn al-Qayyim: I’lam al-muwaqqi’in, 4.205).

In truth, by the term “hadith” here Imam Ahmad meant the hadiths of the Prophet (Allah bless him and give him peace) in all their various chains of transmission, counting each chain of transmission as a separate hadith, and perhaps also counting the statements of the Sahaba. But the larger point here is that even if we eliminate the different chains, and speak only about the hadiths from the Prophet (Allah bless him and give him peace) that are plainly acceptable as evidence, whether sahih, “rigorously authenticated” or hasan “well authenticated” (which for purposes of ijtihad, may be assimilated to the sahih), we are still speaking of well over 10,000 hadiths, and they are not contained in Bukhari alone, or in Bukhari and Muslim alone, nor yet in any six books, or even in any nine. Yet whoever wants to give a fatwa or “formal legal opinion” and judge for people that something is lawful or unlawful, obligatory or sunna, must know all the primary texts that relate to it. For the perhaps 10,000 hadiths that are sahih are, for the mujtahid, as one single hadith, and he must first know them in order to join between them to explain the unified command of Allah.

I say “join between” because most of you must be aware that some sahih hadiths seem to controvert other equally sahih hadiths. What does a mujtahid do in such an instance?

Ijtihad. Let’s look at some examples. Most of us know the hadiths about fasting on the Day of ‘Arafa for the non-pilgrim, that “it expiates [the sins of] the year before and the year after” (Muslim, 2.819). But another rigorously authenticated hadith prohibits fasting on Friday alone (Bukhari, 3.54), and a well authenticated hadith prohibits fasting on Saturday alone (Tirmidhi, 3.120), of which Tirmidhi explains, “The meaning of the ‘offensiveness’ in this is when a man singles out Saturday to fast on, since the Jews venerate Saturdays” (ibid.). Some scholars hold Sundays offensive to fast on for the same reason, that they are venerated by non-Muslims. (Other hadiths permit fasting one of these days together with the day before or the day after it, perhaps because no religion venerates two of the days in a row.) The question arises: What does one do when ‘Arafa falls on a Friday, a Saturday, or a Sunday? The general demand for fasting on the Day of ‘Arafa might well be qualified by the specific prohibition of fasting on just one of these days. But a mujtahid aware of the whole hadith corpus would certainly know a third hadith related by Muslim that is even more specific, and says: “Do not single out Friday from among other days to fast on, unless it coincides with a fast one of you performs” (Muslim, 2.801).

The latter hadith establishes for the mujtahid the general principle that the ruling for fasting on a day normally prohibited to fast on changes when it “coincides with a fast one of you performs”—and so there is no problem with fasting whether the Day of Arafa falls on a Friday, Saturday, or Sunday.

Here as elsewhere, whoever wants to understand the ruling of doing something in Islam must know all the texts connected with it. Because as ordinary Muslims, you and I are not only responsible for obeying the Qur’anic verses and hadiths we are familiar with. We are responsible for obeying all of them, the whole shari’a. And if we are not personally qualified to join between all of its texts—and we have heard Ahmad ibn Hanbal discuss how much knowledge this takes—we must follow someone who can, which is why Allah tells us, “Ask those who recall if you know not.”

The size and nature of this knowledge necessitate that the non-specialist use adab or “proper respect” towards the scholars of fiqh when he finds a hadith, whether in Bukhari or elsewhere, that ostensibly contradicts the schools of fiqh. A non-scholar, for example, reading through Sahih al-Bukhari will find the hadith that the Prophet (Allah bless him and give him peace) bared a thigh on the ride back from Khaybar (Bukhari, 1.103–4). And he might imagine that the four madhhabs or “legal schools”—Hanafi, Maliki, Shafi’i, and Hanbali—were mistaken in their judgment that the thigh is ‘awra or “nakedness that must be covered.”

But in fact there are a number of other hadiths, all of them well authenticated (hasan) or rigorously authenticated (sahih) that prove that the Prophet (Allah bless him and give him peace) explicitly commanded various Sahaba to cover the thigh because it was nakedness. Hakim reports that the Prophet (Allah bless him and give him peace) saw Jarhad in the mosque wearing a mantle, and his thigh became uncovered, so the Prophet told him, “The thigh is part of one’s nakedness” (al-Mustadrak), of which Hakim said, “This is a hadith whose chain of transmission is rigorously authenticated (sahih),” which Imam Dhahabi confirmed (ibid.). Imam al-Baghawi records the sahih hadith that “the Prophet (Allah bless him and give him peace) passed by Ma’mar, whose two thighs were exposed, and told him, ‘O Ma’mar, cover your two thighs, for the two thighs are nakedness” (Sharh al-sunna 9.21). And Ahmad ibn Hanbal records that the Prophet (Allah bless him and give him peace) said, “When one of you marries [someone to] his servant or hired man, let him not look at his nakedness, for what is below his navel to his two knees is nakedness” (Ahmad, 2.187), a hadith with a well authenticated (hasan) chain of transmission. The mujtahid Imams of the four schools knew these hadiths, and joined between them and the Khaybar hadith in Bukhari by the methodological principle that: “An explicit command in words from the Prophet (Allah bless him and give him peace) is given precedence over an action of his.” Why?

Among other reasons, because certain laws of the shari’a applied to the Prophet alone (Allah bless him and give

him peace). Such as the fact that when he went into battle, he was not permitted to retreat, no matter how outnumbered. Or such as the obligatoriness for him alone of praying tahajjud or “night vigil prayer” after rising from sleep before dawn, which is merely sunna for the rest of us. Or such as the permissibility for him alone of not breaking his fast at night between fast-days. Or such as the permissibility for him alone of having more than four wives—the means through which Allah, in His wisdom, preserved for us the minutest details of the Prophet’s day-to-day sunna (Allah bless him and give him peace), which a larger number of wives would be far abler to observe and remember.

Because certain laws of the shari’a applied to him alone, the scholars of ijtiḥad have established the principle that in many cases, when an act was done by the Prophet personally (Allah bless him and give him peace), such as bearing the thigh after Khaybar, and when he gave an explicit command to us to do something else, in this case, to cover the thigh because it is nakedness, then the command is adopted for us, and the act is considered to pertain to him alone (Allah bless him and give him peace).

We can see from this example the kind of scholarship it takes to seriously comprehend the whole body of ḥadith, both in breadth of knowledge, and depth of interpretive understanding or fiqh, and that anyone who would give a fatwa, on the basis of the Khaybar ḥadith in *Sahih al-Bukhari*, that “the scholars are wrong and the ḥadith is right” would be guilty of criminal negligence for his ignorance.

When one does not have substantive knowledge of the Qur’an and ḥadith corpus, and lacks the fiqh methodology to comprehensively join between it, the ḥadiths one has read are not enough. To take another example, there is a well authenticated (ḥasan) ḥadith that “the Prophet (Allah bless him and give him peace) cursed women who visit graves” (Tirmidhi, 3.371). But scholars say that the prohibition of women visiting graves was abrogated (mansukh) by the rigorously authenticated (ṣahih) ḥadith “I had forbidden you to visit graves, but now visit them” (Muslim, 2.672).

Here, although the expression “now visit them” (fa zuruha) is an imperative to men (or to a group of whom at least some are men), the fact that the ḥadith permits women as well as men to now visit graves is shown by another ḥadith related by Muslim in his *Sahih* that when ‘A’isha asked the Prophet (Allah bless him and give him peace) what she should say if she visited graves, he told her, “Say: ‘Peace be upon the believers and Muslims of the folk of these abodes: May Allah have mercy on those of us who have gone ahead and those who have stayed behind: Allah willing, we shall certainly be joining you’” (Muslim, 2.671), which plainly entails the permissibility of her visiting graves in order to say this, for the Prophet (Allah bless him and give him peace) would never have taught her these words if visiting the graves to say them had been disobedience. In other words, knowing all these ḥadiths, together with the methodological principle of naskh or “abrogation,” is essential to drawing the valid fiqh conclusion that the first ḥadith in which “the Prophet (Allah bless him and give him peace) cursed women who visit graves”—was abrogated by the second ḥadith, as is attested to by the third.

Or consider the Qur’anic text in surat al-Ma’ida:

“The food of those who have been given the Book is lawful for you, and your food is lawful for them” (Qur’an 5:5).

This is a general ruling ostensibly pertaining to all their food. Yet this ruling is subject to takhsis, or “restriction” by more specific rulings that prove that certain foods of Ahl al-Kitab, “those who have been given the Book,” such as pork, or animals not properly slaughtered, are not lawful for us.

Ignorance of this principle of takhsis or restriction seems to be especially common among would-be mujtahids of our times, from whom we often hear the more general ruling in the words “But the Qur’an says,” or “But the ḥadith says,” without any mention of the more particular ruling from a different ḥadith or Qur’anic versethat restricts it.

The reply can only be “Yes, brother, the Qur’an does say, ‘The food of those who have been given the Book is lawful for you,’ But what else does it say?” or “Yes, the hadith in Sahih al-Bukhari says the Prophet (Allah bless him and give him peace) bared his thigh on the return from Khaybar. But what else do the hadiths say, and more importantly, are you sure you know it?”

The above examples illustrate only a few of the methodological rules needed by the mujtahid to understand and operationalize Islam by joining between all the evidence. Firstly, we saw the principle of takhsis or “restriction” of general rules by more specific ones, both in the example of fasting on the Day of ‘Arafa when it falls on a Friday, Saturday, or Sunday, and the example of the food of Ahl al-Kitab. Secondly, in the Khaybar hadith in Sahih al-Bukhari about baring the thigh and the hadiths commanding that the thigh be covered, we saw the principle of how an explicit prophetic command in words is given precedence over a mere action when there is a contradiction. Thirdly, we saw the principle of nasikh wa mansukh, of “an earlier ruling being abrogated by a later one,” in the example of the initial prohibition of women visiting graves, and their subsequently being permitted to.

These are only three of the ways that two or more texts of the Qur’an and hadith may enter into and qualify one another, rules that someone who derives the shari’a from them must know. In other words, they are but three tools of a whole methodological toolbox. We do not have the time tonight to go through all these tools in detail, although we can mention some in passing, giving first their Arabic names, such as:

- The *‘amm*, a text of general applicability to many legal rulings, and its opposite:
- The *khass*, that which is applicable to only one ruling or type of ruling.
- The *mujmal*, that which requires other texts to be fully understood, and its opposite:
- The *mubayyan*, that which is plain without other texts.
- The *mutlaq*, that which is applicable without restriction, and its opposite:
- The *muqayyad*, that which has restrictions given in other texts.
- The *nasikh*, that which supersedes previous revealed rulings, and its opposite:
- The *mansukh*: that which is superseded.
- The *nass*: that which unequivocally decides a particular legal question, and its opposite:
- The *dhahir*: that which can bear more than one interpretation.

My point in mentioning what a mujtahid is, what fiqh is, and the types of texts that embody Allah’s commands, with the examples that illustrate them, is to answer our original question: “Why can’t we take our Islamic practice from the word of Allah and His messenger, which are divinely protected, instead of taking it from mujtahid Imams, who are not?” The answer, we have seen, is that revelation cannot be acted upon without understanding, and understanding requires firstly that one have the breadth of mastery of the whole, and secondly, the knowledge of how the parts relate to each other. Whoever joins between these two dimensions of the revelation is taking his Islamic practice from the word of Allah and His messenger, whether he does so personally, by being a mujtahid Imam, or whether by a means of another, by following one.

Following Scholars (Taqlid). The Qur’an clearly distinguishes between these two levels—the nonspecialists whose way is taqlid or “following the results of scholar without knowing the detailed evidence”; and those whose task is to know and evaluate the evidence—by Allah Most High saying in surat al-Nisa’:

“If they had referred it to the Messenger and to those of authority among them, then those of them whose task it is to find it out would have known the matter” (Qur’an 4:83)

—where alladhina yastanbitunahu minhum, “those of them whose task it is to find it out,” refers to those possessing the capacity to infer legal rulings directly from evidence, which is called in Arabic precisely *istinbat*, showing, as Qur’anic exegete al-Razi says, that “Allah has commanded those morally responsible to refer actual facts to someone who can infer (yastanbitu) the legal ruling concerning them” (Tafsir al-Fakhr al-Razi, 10.205).

A person who has reached this level can and indeed must draw his inferences directly from evidence, and may not merely follow another scholar's conclusions without examining the evidence (taqlid), a rule expressed in books of methodological principles of fiqh as: *Laysa li al-'alim an yuqallida*, "The alim [i.e. the mujtahid at the level of *istinbat* referred to by the above Qur'anic verse] may not merely follow another scholar" (al-Juwayni: *Sharh al-Waraqat*, 75), meaning it is not legally permissible for one mujtahid to follow another mujtahid unless he knows and agrees with his evidences.

The mujtahid Imams trained a number of scholars who were at this level. Imam Shafi'i had al-Muzani, and Imam Abu Hanifa had Abu Yusuf and Muhammad ibn al-Hasan al-Shaybani. It was to such students that Abu Hanifa addressed his words: "It is unlawful for whoever does not know my evidence to give my position as a fatwa" (al-Hamid: *Luzum ittiba' madhahib al-a'imma*, 6), and, "It is not lawful for anyone to give our position as a fatwa until he knows where we have taken it from" (ibid.).

It is one of the howlers of our times that these words are sometimes quoted as though they were addressed to ordinary Muslims. If it were unlawful for the carpenter, the sailor, the computer programmer, the doctor, to do any act of worship before he had mastered the entire textual corpus of the Qur'an and thousands of hadiths, together with all the methodological principles needed to weigh the evidence and comprehensively join between it, he would either have to give up his profession or give up his religion. A lifetime of study would hardly be enough for this, a fact that Abu Hanifa knew better than anyone else, and it was to scholars of *istinbat*, the mujtahids, that he addressed his remarks. Whoever quotes these words to non-scholars to try to suggest that Abu Hanifa meant that it is wrong for ordinary Muslims to accept the work of scholars, should stop for a moment to reflect how insane this is, particularly in view of the life work of Abu Hanifa from beginning to end, which consisted precisely in summarizing the fiqh rulings of the religion for ordinary people to follow and benefit from.

Imam Shafi'i was also addressing this top level of scholars when he said: "When a hadith is sahih, it is my school (*madhhab*)"—which has been misunderstood by some to mean that if one finds a hadith, for example, in *Sahih al-Bukhari* that is inconsistent with a position of Shafi'i's, one should presume that he was ignorant of it, drop the fiqh, and accept the hadith.

I think the examples we have heard tonight of joining between several hadiths for a single ruling are too clear to misunderstand Shafi'i in this way. Shafi'i is referring to hadiths that he was previously unaware of and that mujtahid scholars know him to have been unaware of when he gave a particular ruling. And this, as Imam Nawawi has said, "is very difficult," for Shafi'i was aware of a great deal. We have heard the opinion of Shafi'i's student Ahmad ibn Hanbal about how many hadiths a faqih must know, and he unquestionably considered Shafi'i to be such a scholar, for Shafi'i was his sheikh in fiqh. Ibn Khuzayma, known as "the Imam of Imams" in hadith memorization, was once asked, "Do you know of any rigorously authenticated (*sahih*) hadith that Shafi'i did not place in his books?" And he said "No" (Nawawi: *al-Majmu'*, 1.10). And Imam Dhahabi has said, "Shafi'i did not make a single mistake about a hadith" (Ibn Subki: *Tabaqat al-Shafi'iyya*, 9.114). It is clear from all of this that Imam Shafi'i's statement "When a hadith is sahih, it is my position" only makes sense—and could result in meaningful corrections—if addressed to scholars at a level of hadith mastery comparable to his own.

Hadith Authentication. The last point raises another issue that few people are aware of today, and I shall devote the final part of my speech to it. Just as the mujtahid Imam is not like us in his command of the Qur'an and hadith evidence and the principles needed to join between it and infer rulings from it, so too he is not like us in the way he judges the authenticity of hadiths. If a person who is not a hadith specialist needs to rate a hadith, he will usually want to know if it appears, for example, in *Sahih al-Bukhari*, or *Sahih Muslim*, or if some hadith scholar has declared it to be sahih or hasan. A mujtahid does not do this.

Rather, he reaches an independent judgment as to whether a particular hadith is truly from the Prophet (Allah

bless him and give him peace) through his own knowledge of hadith narrators and the sciences of hadith, and not from taqlid or “following the opinion of another hadith scholar.”

It is thus not necessarily an evidence against the positions of a mujtahid that Bukhari, or Muslim, or whoever, has accepted a hadith that contradicts the mujtahid’s evidence. Why? Because among hadith scholars, the reliability rating of individual narrators in hadith chains of transmission are disagreed about and therefore hadiths are disagreed about in the same manner that particular questions of fiqh are disagreed about among the scholars of fiqh. Like the schools of fiqh, the extent of this disagreement is relatively small in relation to the whole, but one should remember that it does exist.

Because a mujtahid scholar is not bound to accept another scholar’s ijtiḥad regarding a particular hadith, the ijtiḥad of a hadith specialist of our own time that, for example, a hadith is weak (da‘if), is not necessarily an evidence against the ijtiḥad of a previous mujtahid that the hadith is acceptable. This is particularly true in the present day, when specialists in hadith are not at the level of their predecessors in either knowledge of hadith sciences, or memorization of hadiths.

We should also remember what sahih means. I shall conclude my essay with the five conditions that have to be met for a hadith to be considered sahih, and we shall see, in sha’ Allah, how the scholars of hadith have differed about them, a discussion drawn in its outlines from contemporary Syrian hadith scholar Muhammad ‘Awwama’s *Athar al-hadith al-sharif fi ikhtilaf al-A’imma al-fuqaha* [The effect of hadith on the differences of the Imams of fiqh] (21–23):

(a) The first condition is that a hadith must go back to the Prophet (Allah bless him and give him peace) by a continuous chain of narrators. There is a difference of opinion here between Bukhari and Muslim, in that Bukhari held that for any two adjacent narrators in a chain of transmission, it must be historically established that the two actually met, whereas Muslim and others stipulated only that their meeting have been possible, such as by one having lived in a particular city that the other is known to have visited at least once in his life. So some hadiths will be acceptable to Muslim that will not be acceptable to Bukhari and those of the mujtahid imams who adopt his criterion.

(b) The second condition for a sahih hadith is that the narrators be morally upright. The scholars have disagreed about the definition of this, some accepting that it is enough that a narrator be a Muslim who is not proven to have been unacceptable. Others stipulate that he be outwardly established as having been morally upright, while other scholars stipulate that this be established inwardly as well. These different criteria are naturally reasons why two mujtahids may differ about the authenticity of a single hadith.

(c) The third condition is that the narrators must be known to have had accurate memories. The verification of this is similarly subject to some disagreement between the Imams of hadith, resulting in differences about reliability ratings of particular narrators, and therefore of particular hadiths.

(d) The fourth condition for a sahih hadith is that the text and transmission of the hadith must be free of shudhudh, or “variance from established standard narrations of it.” An example is when a hadith is related by five different narrators who are contemporaries of one another, all of whom relate the same hadith from the same sheikh through his chain of transmission back to the Prophet (Allah bless him and give him peace). Here, if we find that four of the hadiths have the same wording but one of them has a variant wording, the hadith with the variant wording is called shadhdh or “deviant,” and it is not accepted, because the difference is naturally assumed to be the mistake of the one narrator, since all of the narrators heard the hadith from the same sheikh.

There is a hadith (to take an example researched by our hadith teacher, sheikh Shu‘ayb al-Arna‘ut) related by Ahmad (4.318), Bayhaqi (2.132), Ibn Khuzayma (1.354), and Ibn Hibban, with a reliable chain of narrators (thiqat)—

except for Kulayb ibn Hisham, who is a merely “acceptable” (saduq), not “reliable” (thiqa)—that the Companion Wa’il ibn Hujr al-Hadrami said that when he watched the Prophet (Allah bless him and give him peace) kneeling in the Tashahhud or “Testification of Faith” of his prayer, the Prophet

lifted his [index] finger, and I saw him move it, supplicating with it. I came [some time] after that and saw people in [winter] over-cloaks, their hands moving under the cloaks (Ibn Hibban, 5.170–71).

Now, all of the versions of the hadith mentioning that the Prophet (Allah bless him and give him peace) moved his finger have been related to us by way of Za’ida ibn Qudama al-Thaqafi, a narrator who is considered reliable, and who transmitted it from the hadith sheikh ‘Asim ibn Kulayb, who related it from his father Kulayb ibn Shihab, from Wa’il ibn Hujr al-Hadrami. But we find that this version of “moving the finger” contradicts versions of the hadith transmitted from the same sheikh, ‘Asim ibn Kulayb, by no less than ten of ‘Asim’s other students, all of them reliable, who heard ‘Asim report that the Prophet (Allah bless him and give him peace) did not move but rather pointed (ashara) with his index finger (towards the qibla or “direction of prayer”).

These companions of ‘Asim (with their hadiths, which are well authenticated (hasan)) are: Sufyan al-Thawri: “then he pointed with his index finger, putting the thumb to the middle finger to make a ring with them” (al-Musannaf 2.68–69); Sufyan ibn ‘Uyayna: “he joined his thumb and middle finger to make a ring, and pointed with his index finger” (Ahmad, 4.318); Shu’ba ibn al-Hajjaj: “he pointed with his index finger, and formed a ring with the middle one” (Ahmad, 4.319); Qays ibn al-Rabi’: “then he joined his thumb and middle finger to make a ring, and pointed with his index finger” (Tabarani, 22.33–34); ‘Abd al-Wahid ibn Ziyad al-‘Abdi: “he made a ring with a finger, and pointed with his index finger” (Ahmad, 4.316); ‘Abdullah ibn Idris al-Awdi: “he had joined his thumb and middle finger to make a ring, and raised the finger between them to make du’a(supplication) in the Testification of Faith” (Ibn Majah, 1.295); Zuhayr ibn Mu’awiya: “and I saw him [‘Asim] say, ‘Like this,’—and Zuhayr pointed with his first index finger, holding two fingers in, and made a ring with his thumb and second index [middle] finger” (Ahmad, 4.318–19); Abu al-Ahwas Sallam ibn Sulaym: “he began making du’a like this—meaning with his index finger, pointing with it—” (Musnad al-Tayalisi, 137); Bishr ibn al-Mufaddal: “and I saw him [‘Asim] say, ‘Like this,’—and Bishr joined his thumb and middle finger to make a ring, and pointed with his index finger” (Abi Dawud, 1.251); and Khalid ibn ‘Abdullah al-Wasiti: “then he joined his thumb and middle finger to make a ring, and pointed with his index finger” (Bayhaqi, 2.131).

All of these narrators are reliable (thiqat), and all heard ‘Asim ibn Kulayb relate that the Prophet (Allah bless him and give him peace) “pointed with(ashara bi) his index finger” during the Testimony of Faith in his prayer. There are many other narrations of “pointing with the index finger” transmitted through sheikhs other than ‘Asim, omitted here for brevity—four of them, for example, in Sahih Muslim, 1.408–9). The point is, for illustrating the meaning of a shadhdh or “deviant hadith,” that the version of moving the finger was conveyed only by Za’ida ibn Qudama from ‘Asim. Ibn Khuzayma says: “There is not a single hadith containing yuharrikuha (‘he moved it’) except this hadith mentioned by Za’ida” (Ibn Khuzayma, 1.354).

So we know that the Prophet (Allah bless him and give him peace) used to point with his index finger, and that the version of “moving his finger” isshadhdh or “deviant,” and represents a slip of the narrator, for the word ishara in the majority’s version means only “to point or gesture at,” or “to indicate with the hand,” and has no recorded lexical sense of wiggling or shaking the finger (Lisan al-‘Arab, 4.437 and al-Qamus al-muhit (540). This interpretation is explicitly borne out by well authenticated hadiths related from the Companion ‘Abdullah ibn al-Zubayr that “the Prophet (Allah bless him and give him peace) used to point with his index finger when making supplication [in the Testification of Faith], and did not move it” (Abi Dawud, 1.260) and that he “used to point with his index finger when making supplication, without moving it” (Bayhaqi, 2.131–32).

Finally, we may note that Imam Bayhaqi has joined between the Za’ida ibn Qudama hadith and the many hadiths that apparently contradict it by suggesting that moving the finger in the Za’ida hadith may mean simply lifting

it (rafa'a), a wording explicitly mentioned in one version recorded by Muslim that the Prophet (Allah bless him and give him peace) "raised the right finger that is next to the thumb, and supplicated with it" (Muslim, 1.408). So according to Bayhaqi, the contradiction is only apparent, and raising the finger is the "movement" that Wa'il saw from the Prophet (Allah bless him and give him peace) and the people's hands under their cloaks, according to Za'ida's version, which remains, however, shadhdh or "deviant" from a hadith point of view, unless understood in this liminary sense.

(e) The fifth and final condition for a sahih hadith is that both the text and chain of transmission must be without 'illa or "hidden flaw" that alerts experts to expect inauthenticity in it. We will dwell for a moment on this point not only because it helps illustrate the processes of ijtiḥad, but because in-depth expertise in this condition was not common even among top hadith Imams. The greatest name in the field was 'Ali al-Madini, one of the sheikhs of Bukhari, though his major work about it is now unfortunately lost. Daraqutni is perhaps the most famous specialist in the field whose works exist. In the words of Ibn al-Salah, a hafiz or "hadith master" (someone with at least 100,000 hadiths by memory), the knowledge of the 'illa or "hidden flaw" is:

among the greatest of the sciences of hadith, the most exacting, and highest: only scholars of great memorization, hadith expertise, and penetrating understanding have a thorough knowledge of it. It refers to obscure, hidden flaws that vitiate hadiths, "flawed" meaning that a defect is discovered that negates the authenticity of a hadith that is outwardly "rigorously authenticated" (sahih). It affects hadiths with reliable chains of narrators that outwardly appear to fulfill all the conditions of a sahih hadith ('Ulum al-hadith).

It may surprise some people to learn that one example often cited in hadith textbooks of such a hidden flaw ('illa) is from Sahih Muslim, all of whose hadiths are rigorously authenticated (sahih), as Ibn al-Salah has said, "except for a very small number of words, which hadith masters of textual evaluation (naqd) such as Daraqutni and others have critiqued, and which are known to scholars of this level" ('Ulum al-hadith). The hadith of the present example was related by Muslim from the Companion Anas ibn Malik in several versions, which might convince those unaware of its flaw to believe that someone at prayer should omit the Basmala or "Bismi Llāhi r-Rahmāni r-Rahim" at the beginning of the Fatiha. According to the hadith, Anas ibn Malik (Allah be well pleased with him) said,

I prayed with the Messenger of Allah (Allah bless him and give him peace), Abu Bakr, 'Umar, and 'Uthman, and they opened with "al-Hamdu li Llāhi Rabbi l-'Alamin," not mentioning "Bismi Llāhi r-Rahmāni r-Rahim" at the first of the recital or the last of it [and in another version, "I didn't hear any of them recite 'Bismi Llāhi r-Rahmāni r-Rahim'"] (Muslim, 1.299).

Scholars say the hadith's flaw lies in the negation of the Basmala at the end, which is not the words of Anas, but rather one of the subnarrators explaining what he thought Anas meant. Ibn al-Salah says: "Its subnarrator related it with the above-mentioned wording in accordance with his own understanding of it" (Muqaddima Ibn al-Salah (b01), 99). This hadith is given as an example of a "hidden flaw" in a number of manuals of hadith terminology such as hadith master (hafiz) Suyuti's *Tadrib al-rawi* (1.254–57); hadith master Ibn al-Salah's *Ulum al-hadith*; hadith master Zayn al-Din al-'Iraqi's *al-Taḥf al-awḥad* (98–103); and others. Al-'Iraqi says, "A number of hadith masters (huffaz) have judged it to be flawed, including Shafi'i, Daraqutni, Bayhaqi, and Ibn 'Abd al-Barr" (ibid., 98).

Now, Bukhari has related the hadith up to the words "and they opened with 'al-Hamdu li Llāhi Rabbi l-'Alamin'; without mentioning omitting the Basmala (Bukhari, 1.189), and Tirmidhi and Abu Dawud relate no other version. Scholars point out, in this connection, that the words "al-Hamdu li Llāhi Rabbi l-'Alamin" were in fact the name of the Fatiha, for the Prophet (Allah bless him and give him peace) and his Companions often used the opening words of suras as names for them; for example, in the hadith in Sahih al-Bukhari of Abu Sa'id ibn al-Mu'alla, who relates that the Prophet (Allah bless him and give him peace) said:

“I will teach you a sura that is the greatest sura of the Qur’an before you leave the mosque.” Then he took my hand, and when he was going out, I said to him, “Didn’t you say, ‘I will teach you a sura that is the greatest sura of the Qur’an before you leave the mosque?’” And he said: “‘Al-Hamdu li Llahi Rabbi l-‘Alamin’: it is the Seven Oft-Recited [Verses] (al-Sab’ al-Mathani) and the Tremendous Recital (al-Qur’an al-‘Adhim) that I have been given” (ibid., 6.20–21).

In this hadith, “Al-Hamdu li Llahi Rabbi l-‘Alamin” is plainly the name of the Fatiha, and means nothing besides, for otherwise, it is one verse, not seven. ‘A’isha, who was one of the ulama of the Sahaba, also referred to names of suras in this way, as in the hadith of Bukhari that

the Prophet (Allah bless him and give him peace), when he went to bed each night, joined his hands together, blew a light spray of saliva upon them, and read over them “Qul huwa Llahu Ahad,” “Qul a’udhu bi Rabbi l-Falaq,” and “Qul a’udhu bi Rabbi n-Nas”; then wiped every part of his body he could with them (ibid., 233–34),

which clearly shows that she named the suras by their opening words (after the Basmala), as did other early Muslims (such as Bukhari in his chapter headings in the section of his Sahih on the Virtues of the Qur’an, for example). So there is no indication, in the portion of the Anas hadith’s wording that is agreed upon by both Bukhari and Muslim; namely, “I prayed with the Messenger of Allah (Allah bless him and give him peace), Abu Bakr, ‘Umar, and ‘Uthman, and they opened with ‘al-Hamdu li Llahi Rabbi l-‘Alamin,” that the Basmala was not recited aloud. Says Tirmidhi: “Imam Shafi’i has said, ‘Its meaning is that they used to begin with the Fatiha before the sura, not that they did not recite “Bismi Llahi r-Rahmani r-Rahim.”’ And Shafi’i held that the prayer was begun with ‘Bismi Llahi r-Rahmani r-Rahim,’ and that it was recited aloud in prayers recited aloud” (Tirmidhi, 2.16).

Hadith scholars who are masters of textual critique, like Daraqutni and others, consider the words of the Anas hadith “not mentioning ‘Bismi Llahi r-Rahmani r-Rahim,’” which outwardly seem to suggest omitting the Basmala, to be vitiated by an ‘illa or “hidden flaw” for many reasons, a few of which are:

—It is established by numerous intersubstantiative channels of transmission (tawatur), that the Prophet (Allah bless him and give him peace) said, “There is no prayer for whoever does not recite the Fatiha” (Bukhari, 1.192). That the Basmala is the Fatiha’s first verse is shown by several facts:

First, the Sahaba affirmed nothing in the collation of the Qur’an (mushaf) of ‘Uthman’s time except what was Qur’an, and they unanimously placed the Basmala at the beginning of every sura except surat al-Tawba.

Second, the Prophet (Allah bless him and give him peace) said, “When you recite ‘al-Hamdu li Llah,’ recite ‘Bismi Llahi r-Rahmani r-Rahim,’ for it is the Sum of the Qur’an (Umm al-Qur’an), and the Compriser of the Scripture (Umm al-Kitab), and the Seven Oft-Repeated [Verses] (al-Sab’ al-Mathani)—and ‘Bismi Llahi r-Rahmani r-Rahim’ is one of its verses” (Bayhaqi, 2.45; and Daraqutni, 1.312), a hadith related with a rigorously authenticated (sahih) channel of transmission to the Prophet (Allah bless him and give him peace), and through another chain to Abu Hurayra alone (Allah be well pleased with him).

Third, Umm Salama relates: “The Prophet (Allah bless him and give him peace) used to recite: ‘Bismi Llahi r-Rahmani r-Rahim. al-Hamdu li Llahi Rabbi l-‘Alamin,’ separating each phrase”; a hadith which Hakim said was rigorously authenticated (sahih) according to the conditions of Bukhari and Muslim, which Imam Dhahabi corroborated (al-Mustadrak, 1.232). Daraqutni also relates from Umm Salama that “the Prophet (Allah bless him and give him peace) when he used to recite the Qur’an would pause in his recital verse by verse: ‘Bismi Llahi r-Rahmani r-Rahim: al-Hamdu li Llahi Rabbi l-‘Alamin: ar-Rahmani r-Rahim: Maliki yawmi d-din.” Daraqutni said, “Its ascription is rigorously authenticated (sahih); all of its narrators are reliable” (Daraqutni, 1.312–13). These hadiths show that the Basmala was recited aloud by the Prophet (Allah bless him and give him peace) as part of the Fatiha.

Fourth, Bukhari relates in his Sahih that when Anas was asked how the Prophet (Allah bless him and give him peace) used to recite, “he answered: ‘By prolonging [the vowels]’—and then he [Anas] recited ‘Bismi Llahi r-Rahmani r-Rahim,’ prolonging the Bismi Llah, prolonging the r-Rahman, and prolonging the r-Rahim” (Bukhari, 6.241), indicating that Anas regarded this as part of the Prophet’s Qur’an recital and that the Prophet (Allah bless him and give him peace) recited it aloud.

Fifth, Daraqutni has recorded two hadiths, both from Ibn ‘Abbas, and has said about each of them, “This is a rigorously authenticated (sahih) chain of transmission, there is not a weak narrator in it,” of which the first is: “The Prophet (Allah bless him and give him peace) used to recite ‘Bismi Llahi r-Rahmani r-Rahim,’ aloud”; and the second is: “The Prophet (Allah bless him and give him peace) used to begin the prayer with ‘Bismi Llahi r-Rahmani r-Rahim’” (al-Nawawi: al-Majmu‘, 3.347).

—Imam al-Mawardi summarizes: “Because it is established that it is obligatory to recite the Fatiha in the prayer, and that the Basmala is part of it, the ruling for reciting the Basmala aloud or to oneself must be the same as that of reciting the Fatiha aloud or to oneself” (al-Hawi al-kabir, 2.139).

—Imam Nawawi says: “Concerning reciting ‘Bismi Llahi r-Rahmani r-Rahim’ aloud, we have mentioned that our position is that it is praiseworthy to do so. Wherever one recites the Fatiha and sura aloud, the ruling for reciting the Basmala aloud is the same as reciting the rest of the Fatiha and sura aloud. This is the position of the majority of the ulama of the Sahaba and those who were taught by them (Tabi‘in) and those after them. As for the Sahaba who held the Basmala is recited aloud at prayer, the hadith master (hafiz) Abu Bakr al-Khatib reports that they included Abu Bakr, ‘Umar, ‘Uthman, ‘Ali, ‘Ammar ibn Yasir, Ubayy ibn Ka‘b, Ibn ‘Umar, Ibn ‘Abbas, Abu Qatada, Abu Sa‘id, Qays ibn Malik, Abu Hurayra, ‘Abdullah ibn Abi Awfa, Shaddad ibn Aws, ‘Abdullah ibn Ja‘far, Husayn ibn ‘Ali, Mu‘awiya, and the congregation of Emigrants (Muhajirin) and Helpers (Ansar) who were present with Mu‘awiya when he prayed in Medina but did not say the Basmala aloud, and they censured him, so he returned to saying it aloud” (al-Majmu‘, 3.341).

These are some reasons why scholars regard the Anas hadith in Sahih Muslim to be mu‘all or “flawed.” We cannot here discuss other aspects of the hadith such as the flaws in its chain of narrators, which are explained in detail in Zayn al-Din ‘Iraqi’s al-Taqqid wa al-idah (100–101), though the foregoing may give a general idea why it has been considered flawed by hadith masters (huffaz) such as Suyuti, ‘Iraqi, Ibn Salah, Ibn ‘Abd al-Barr, Daraqutni, and Bayhaqi—and why the shari‘a ruling apparently deducible from the end of the hadith; namely, omitting the Basmala when reciting the Fatiha at prayer, has been rejected by al-Shafi‘i, Nawawi, and others, who hold that the Basmala is recited aloud whenever the Fatiha is. (The position of Abu Hanifa and Ahmad ibn Hanbal, it may be noted, is that one recites the Basmala to oneself before the Fatiha, thus joining between hadiths on both sides by interpreting the “omitting” in the Anas hadith in other than its apparent sense, to mean merely “reciting to oneself.”) In any case, it is clearly not a story of “the hadith in Sahih Muslim that the Imams didn’t know about,” as some of the unlearned seriously suggest today, but rather a difference of opinion in hadith authentication involving the highest levels of shari‘a scholarship.

Studying the five conditions above for a sahih hadith and the differences about them among specialists shows us why the mujtahid Imams of the schools sometimes differ with one another about whether a particular hadith is really from the Prophet (Allah bless him and give him peace). Whoever believes that a single scholar, whether Bukhari, Muslim, or a contemporary sheikh, can finish off all differences of opinion about the acceptability of particular hadiths, should correct his impressions by going and studying the sciences of hadith. What we can realize from this is that when we find a hadith in Sahih Bukhari that one school of fiqh seems to follow and another does not, it may well be that differences in fiqh methodology, hadith methodology, or both, play a role.

Conclusions. Let me summarize everything I have said tonight. I first pointed out that the knowledge you and I

learn from the Qur'an and hadith may be divided into three categories. The first is the knowledge of Allah and His attributes, and the basic truths of Islamic belief such as the messengerhood of the Prophet (Allah bless him and give him peace), the belief in the Last Day, and so on. Every Muslim can and must learn this knowledge from the Book of Allah and the sunna, which is also the case for the second kind of knowledge: that of general Islamic laws to do good, to avoid evil, to perform the prayer, pay zakat, fast Ramadan, to cooperate with others in good works, and so on. Anyone can and must learn these general prescriptions for him or herself.

Then we discussed a third category of knowledge, which consists of fiqh or "understanding" of specific details of Islamic practice. We found in the Qur'an and sahih hadiths that people are of two types respecting this knowledge, those qualified to do ijtiḥad and those who are not. We mentioned the sahih hadith about "a man who judges for people while ignorant: he shall go to hell," showing that would-be mujtahids are criminals when they operate without training.

We heard the Qur'anic verse that established that a certain group of the Muslim community must learn and be able to teach others the specific details of their religion. We heard the Qur'anic verse that those who do not know must ask those who do, as well as the verse about referring matters to "those whose task it is to find it out."

We talked about these scholars, the mujtahid Imams, firstly, in terms of their comprehensive knowledge of the whole Qur'an and hadith textual corpus, and secondly, in terms of their depth of interpretation, and here we mentioned Qur'an and hadith examples that illustrate the processes by which mujtahid Imams join between multiple texts, and give precedence when there is ostensive conflict. Our concrete examples of ijtiḥad enabled us in turn to understand to whom the Imams addressed their famous remarks not to follow their positions without knowing the proofs. They addressed them to the first rank scholars they had trained and who were capable of grasping and evaluating the issues involved in these particular proofs.

We then saw that the Imams were also mujtahids in the matter of judging hadiths to be sahih or otherwise, and noted that, just as it is unlawful for a mujtahid Imam to do taqlid or "follow another mujtahid without knowing his evidence" in a question of fiqh, neither does he do so in the question of accepting particular hadiths. Finally, we noted that the differences in reliability ratings of hadiths among qualified scholars were parallel to the differences among scholars about the details of Islamic practice: a relatively small amount of difference in relation to the whole.

The main point of all of this is that while every Muslim can take the foundation of his Islam directly from the Qur'an and hadith; namely, the main beliefs and general ethical principles he has to follow—for the specific details of fiqh of Islamic practice, knowing a Qur'anic verse or hadith may be worlds apart from knowing the shari'a ruling, unless one is a qualified mujtahid or is citing one.

As for would-be mujtahids who know some Arabic and are armed with books of hadith, they are like the would-be doctor we mentioned earlier: if his only qualification were that he could read English and owned some medical books, we would certainly object to his practicing medicine, even if it were no more than operating on someone's little finger. So what should be said of someone who knows only Arabic and has some books of hadith, and wants to operate on your akhira?

To understand why Muslims follow madhhabs, we have to go beyond simplistic slogans about "the divinely-protected versus the non-divinely-protected," and appreciate the Imams of fiqh who have operationalized the Qur'an and sunna to apply in our lives as shari'a, and we must ask ourselves if we really "hear and obey" when Allah tells us

"Ask those who know if you know not" (Qur'an 16:43).

I will close this answer by translating a conversation that took place in Damascus between Shari'a professor Mu-

hammad Sa'id al-Buti, and a Salafi teacher⁸⁰. Buti asked him:

Buti: "What is your method for understanding the rulings of Allah? Do you take them from the Qur'an and sunna, or from the Imams of ijtihad?"

Salafi: "I examine the positions of the Imams and their evidences for them, and then take the closest of them to the evidence of the Qur'an and Sunna."

Buti: "You have five thousand Syrian pounds that you have saved for six months. You then buy merchandise and begin trading with it. When do you pay zakat on the merchandise, after six months, or after one year?"

Salafi: [He thought, and said,] "Your question implies you believe zakat should be paid on business capital."

Buti: "I am just asking. You should answer in your own way. Here in front of you is a library containing books of Qur'anic exegesis, hadith, and the works of the mujtahid Imams."

Salafi: [He reflected for a moment, then said,] "Brother, this is din, and not simple matter. One could answer from the top of one's head, but it would require thought, research, and study; all of which take time. And we have come to discuss something else."

Buti: I dropped the question and said, "All right. Is it obligatory for every Muslim to examine the evidences for the positions of the Imams, and adopt the closest of them to the Qur'an and Sunna?"

Salafi: "Yes."

Buti: "This means that all people possess the same capacity for ijtihad that the Imams of the madhhabs have; or even greater, since without a doubt, anyone who can judge the positions of the Imams and evaluate them according to the measure of the Qur'an and sunna must know more than all of them."

Salafi: He said, "In reality, people are of three categories: the muqallid or 'follower of qualified scholarship without knowing the primary textual evidence (of Qur'an and hadith)'; the muttabi', or 'follower of primary textual evidence'; and the mujtahid, or scholar who can deduce rulings directly from the primary textual evidence (ijtihad). He who compares between madhhabs and chooses the closest of them to the Qur'an is a muttabi', a follower of primary textual evidence, which is an intermediate degree between following scholarship (taqlid) and deducing rulings from primary texts (ijtihad)."

Buti: "Then what is the follower of scholarship (muqallid) obliged to do?"

Salafi: "To follow the mujtahid he agrees with."

Buti: "Is there any difficulty in his following one of them, adhering to him, and not changing?"

Salafi: "Yes there is. It is unlawful (haram)."

Buti: "What is the proof that it is unlawful?"

Salafi: "The proof is that he is obliging himself to do something Allah Mighty and Majestic has not obligated him to."

Buti: I said, “Which of the seven canonical readings (qira’at) do you recite the Qur’an in?”

Salafi: “That of Hafs.”

Buti: “Do you recite only in it, or in a different canonical reading each day?”

Salafi: “No, I recite only in it.”

Buti: “Why do you read only it when Allah Mighty and Majestic has not obliged you to do anything except to recite the Qur’an as it has been conveyed—with the total certainty of tawatur (being conveyed by witnesses so numerous at every stage of transmission that their sheer numbers obviate the possibility of forgery or alteration), from the Prophet (Allah bless him and give him peace)?”

Salafi: “Because I have not had a opportunity to study other canonical readings, or recite the Qur’an except in this way.”

Buti: “But the individual who learns the fiqh of the Shafi‘i school—he too has not been able to study other madh-habs or had the opportunity to understand the rules of his religion except from this Imam. So if you say that he must know all the ijtihaads of the Imams so as to go by all of them, it follows that you too must learn all the canonical readings so as to recite in all of them. And if you excuse yourself because you cannot, you should excuse him also. In any case, what I say is: where did you get that it is obligatory for a follower of scholarship (muqallid) to keep changing from one madhhab to another, when Allah has not obliged him to? That is, just as he is not obliged to adhere to a particular madhhab, neither is he obliged to keep changing.”

Salafi: “What is unlawful for him is adhering to one while believing that Allah has commanded him to do so.”

Buti: “That is something else, and is true without a doubt and without any disagreement among scholars. But is there any problem with his following a particular mujtahid, knowing that Allah has not obliged him to do that?”

Salafi: “There is no problem.”

Buti: [Al-Khajjadi’s] al-Karras, which you teach from, contradicts you. It says this is unlawful, in some places actually asserting that someone who adheres to a particular Imam and no other is an unbeliever (kafir).”

Salafi: He said, “Where?” and then began looking at the Karras, considering its texts and expressions, reflecting on the words of the author “Whoever follows one of them in particular in all questions is a blind, imitating, mistaken bigot, and is “among those who have divided their religion and are parties” [Qur’an 30:32]. He said, “By follows, he means someone who believes it legally obligatory for him to do so. The wording is a little incomplete.”

Buti: I said, “What evidence is there that that’s what he meant? Why don’t you just say the author was mistaken?”

Salafi: He insisted that the expression was correct, that it should be understood as containing an unexpressed condition [i.e. “provided one believes it is legally obligatory”], and he exonerated the writer from any mistake in it.

Buti: I said, “But interpreted in this fashion, the expression does not address any opponent or have any significance. Not a single Muslim is unaware that following such and such a particular Imam is not legally obligatory. No Muslim does so except from his own free will and choice.”

Salafi: “How should this be, when I hear from many common people and some scholars that it is legally obligatory to follow one particular school, and that a person may not change to another?”

Buti: "Name one person from the ordinary people or scholars who said that to you."

He said nothing, and seemed surprised that what I said could be true, and kept repeating that he had thought that many people considered it unlawful to change from one madhhab to another.

I said, "You won't find anyone today who believes this misconception, though it is related from the latter times of the Ottoman period that they considered a Hanafi changing from his own school to another to be an enormity. And without a doubt, if true, this was something that was complete nonsense from them; a blind, hateful bigotry."

I then said, "Where did you get this distinction between the muqallid 'follower of scholarship' and the muttabi' 'follower of evidence': Is there a original, lexical distinction [in the Arabic language], or is it merely terminological?"

Salafi: "There is a lexical difference."

Buti: I brought him lexicons with which to establish the lexical difference between the two words, and he could not find anything. I then said: "Abu Bakr (Allah be well pleased with him) said to a desert Arab who had objected to the allotment for him agreed upon by the Muslims, 'If the Emigrants accept, you are but followers'—using the word 'followers' (tabi') to mean 'without any prerogative to consider, question, or discuss.'" (Similar to this is the word of Allah Most High, "When those who were followed (uttubi'u) disown those those who followed (attaba'u) upon seeing the torment, and their relations are sundered" (Qur'an 2:166), which uses follow (ittiba') for the most basic blind imitation).

Salafi: He said, "Then let it be a technical difference: don't I have a right to establish a terminological usage?"

Buti: "Of course. But this term of yours does not alter the facts. This person you term a muttabi' (follower of scholarly evidence) will either be an expert in evidences and the means of textual deduction from them, in which case he is a mujtahid. Or, if not an expert or unable to deduce rulings from them, then he is muqallid (follower of scholarly conclusions). And if he is one of these on some questions, and the other on others, then he is a muqallid for some and a mujtahid for others. In any case, it is an either-or distinction, and the ruling for each is clear and plain."

Salafi: He said, "The muttabi' is someone able to distinguish between scholarly positions and the evidences for them, and to judge one to be stronger than others. This is a level different to merely accepting scholarly conclusions."

Buti: "If you mean," I said, "by distinguishing between positions differentiating them according to the strength or weakness of the evidence, this is the highest level of ijtiḥād. Are you personally able to do this?"

Salafi: "I do so as much as I can."

Buti: "I am aware," I said, "that you give as a fatwas that a three fold pronouncement of divorce on a single occasion only counts as one time. Did you check, before this fatwa of yours, the positions of the Imams and their evidences on this, then differentiate between them, so to give the fatwa accordingly? Now, 'Uwaymir al-'Ajlanī pronounced a three fold divorce at one time in the presence of the Prophet (Allah bless him and give him peace) after he had made public imprecation against her for adultery (li'an), saying, 'If I retain her, O Messenger of Allah, I will have lied against her: she is [hereby] thrice divorced.' What do you know about this ḥadīth and its relation to this question, and its bearing as evidence for the position of the scholarly majority [that a threefold divorce pronounced on a single occasion is legally finalized and binding] as opposed to the position of Ibn Taymiyya [that a threefold divorce on a single occasion only counts as once]?"

Salafi: "I did not know this hadith."

Buti: "Then how could you give a fatwa on this question that contradicts what the four madhhabs unanimously concur upon, without even knowing their evidence, or how strong or weak it was? Here you are, discarding the principle you say you have enjoined on yourself and mean to enjoin on us, the principle of "following scholarly evidence (ittiba‘)" in the meaning you have terminologically adopted."

Salafi: "At the time I didn't own enough books to review the positions of the Imams and their evidence."

Buti: "Then what made you rush into giving a fatwa contravening the vast majority of Muslims, when you hadn't even seen any of their evidences?"

Salafi: "What else could I do? I asked and I only had a limited amount of scholarly resources."

Buti: "You could have done what all scholars and Imams have done; namely, say "I didn't know," or told the questioner the position of both the four madhhabs and the position of those who contravene them; without giving a fatwa for either side. You could have done this, or rather, this was what was obligatory for you, especially since the problem was not personally yours so as to force you to reach some solution or another. As for your giving a fatwa contradicting the consensus (ijma‘) of the four Imams without knowing—by your own admission—their evidences, sufficing yourself with the agreement in your heart for the evidences of the opposition, this is the very utmost of the kind of bigotry you accuse us of."

Salafi: "I read the Imams' opinions in [Nayl al-awtar, by] Shawkani, Subul al-salam [by al-Amir al-San‘ani], and Fiqh al-sunna by Sayyid Sabiq."

Buti: "These are the books of the opponents of the four Imams on this question. All of them speak from one side of the question, mentioning the proofs that buttress their side. Would you be willing to judge one litigant on the basis of his words alone, and that of his witnesses and relatives?"

Salafi: "I see nothing blameworthy in what I have done. I was obliged to give the questioner an answer, and this was as much as I was able to reach with my understanding."

Buti: "You say you are a "follower of scholarly evidence (muttabi‘)" and we should all be likewise. You have explained "following evidence" as reviewing the positions of all madhhabs, studying their evidences, and adopting the closest of them to the correct evidence—while in doing what you have done, you have discarded the principle completely. You know that the unanimous consensus of the four madhhabs is that a threefold pronouncement of divorce on one occasion counts as a three fold, finalized divorce, and you know that they have evidences for this that you are unaware of, despite which you turn from their consensus to the opinion that your personal preference desires. Were you certain beforehand that the evidence of the four Imams deserved to be rejected?"

Salafi: "No; but I wasn't aware of them, since I didn't have any reference works on them."

Buti: "Then why didn't you wait? Why rush into it, when Allah never obligated you to do anything of the sort? Was your not knowing the evidences of the scholarly majority a proof that Ibn Taymiya was right? Is the bigotry you wrongly accuse us of anything besides this?"

Salafi: "I read evidences in the books available to me that convinced me. Allah has not enjoined me to do more than that."

Buti: “If a Muslim sees a proof for something in the books he reads, is that a sufficient reason to disregard the madhhabs that contradict his understanding, even if he doesn’t know their evidences?”

Salafi: “It is sufficient.”

Buti: “A young man, newly religious, without any Islamic education, reads the word of Allah Most High “To Allah belongs the place where the sun rises and where it sets: wherever you turn, there is the countenance of Allah. Verily, Allah is the All-encompassing, the All-knowing (Qur’an 2:115), and gathers from it that a Muslim may face any direction he wishes in his prescribed prayers, as the ostensive purport of the verse implies. But he has heard that the four Imams unanimously concur upon the necessity of his facing towards the Kaaba, and he knows they have evidences for it that he is unaware of. What should he do when he wants to pray? Should he follow his conviction from the evidence available to him, or follow the Imam who unanimously concur on the contrary of what he has understood?”

Salafi: “He should follow his conviction.”

Buti: “And pray towards the east for example. And his prayer would be legally valid?”

Salafi: “Yes. He is morally responsible for following his personal conviction.”

Buti: “What if his personal conviction leads him to believe there is no harm in making love to his neighbor’s wife, or to fill his belly with wine, or wrongfully take others’ property: will all this be mitigated in Allah’s reckoning by “personal conviction”?

Salafi: [He was silent for a moment, then said,] “Anyway, the examples you ask about are all fantasies that do not occur.”

Buti: “They are not fantasies; how often the like of them occurs, or even stranger. A young man without any knowledge of Islam, its Book, its sunna, who happens to hear or read this verse by chance, and understands from it what any Arab would from its outward purport, that there is no harm in someone praying facing any direction he wants—despite seeing people’s facing towards the Kaaba rather than any other direction. This is an ordinary matter, theoretically and practically, as long as there are those among Muslims who don’t know a thing about Islam. In any event, you have pronounced upon this example—imaginary or real—a judgement that is not imaginary, and have judged “personal conviction” to be the decisive criterion in any event. This contradicts your differentiating people into three groups: followers of scholars without knowing their evidence (muqallidin), followers of scholars’ evidence (muttabi’in), and mujtahids.”

Salafi: “Such a person is obliged to investigate. Didn’t he read any hadith, or any other Qur’anic verse?”

Buti: He didn’t have any reference works available to him, just as you didn’t have any when you gave your fatwa on the question of [threefold] divorce. And he was unable to read anything other than this verse connected with facing the qibla and its obligatory character. Do you still insist that he must follow his personal conviction and disregard the Imams’ consensus?”

Salafi: “Yes. If he is unable to evaluate and investigate further, he is excused, and it is enough for him to rely on the conclusions his evaluation and investigation lead him to.”

Buti: “I intend to publish these remarks as yours. They are dangerous, and strange.”

Salafi: “Publish whatever you want. I’m not afraid.”

Buti: “How should you be afraid of me, when you are not afraid of Allah Mighty and Majestic, utterly discarding by these words the word of Allah Mighty and Majestic [in Sura al-Nahl] ‘Ask those who recall if you know not’ (Qur’an 16:43).”

Salafi: “My brother,” he said, “These Imams are not divinely protected from error (ma’sum). As for the Quranic verse that this person followed [in praying any direction], it is the word of Him Who Is Protected from All Error, may His glory be exalted. How should he leave the divinely protected and attach himself to the tail of the non-divinely-protected?”

Buti: “Good man, what is divinely protected from error is the true meaning that Allah intended by saying, “To Allah belongs the place where the sun rises and where it sets . . .”—not the understanding of the young man who is as far as can be from knowing Islam, its rulings, and the nature of its Qur’an. That is to say, the comparison I am asking you to make is between two understandings: the understanding of this ignorant youth, and the understanding of the mujtahid Imams, neither of which is divinely protected from error, but one of which is rooted in ignorance and superficiality, and the other of which is rooted in investigation, knowledge, and accuracy.”

Salafi: “Allah does not make him responsible for more than his effort can do.”

Buti: “Then answer me this question. A man has a child who suffers from some infections, and is under the care of all the doctors in town, who agree he should have a certain medicine, and warn his father against giving him an injection of penicillin, and that if he does, he will be exposing the child’s life to destruction. Now, the father knows from having read a medical publication that penicillin helps in cases of infection. So he relies on his own knowledge about it, disregards the advice of the doctors since he doesn’t know the proof for what they say, and employing instead his own personal conviction, treats the child with a penicillin injection, and thereafter the child dies. Should such a person be tried, and is he guilty of a wrong for what he did, or not?”

Salafi: [He thought for a moment and then said,] “This is not the same as that.”

Buti: “It is exactly the same. The father has heard the unanimous judgement of the doctors, just as the young man has heard the unanimous judgement of the Imams. One has followed a single text he read in a medical publication, the other has followed a single text he has read in the Book of Allah Mighty and Majestic. This one has gone by personal conviction, and so has that.”

Salafi: “Brother, the Qur’an is light. Light. In its clarity as evidence, is light like any other words?”

Buti: “And the light of the Qur’an is reflected by anyone who looks into it or recites it, such that he understands it as light, as Allah meant it? Then what is the difference between those who recall [Qur’an 16:43] and anyone else, as long as all partake of this light? Rather, the two above examples are comparable, there is no difference between them at all; you must answer me: does the person investigating—in each of the two examples—follow his personal conviction, or does he follow and imitate specialists?”

Salafi: “Personal conviction is the basis.”

Buti: “He used personal conviction, and it resulted in the death of the child. Does this entail any responsibility, moral or legal?”

Salafi: “It doesn’t entail any responsibility at all.”

Buti: I said, “Then let us end the investigation and discussion on this last remark of yours, since it closes the way to

any common ground between you and me on which we can base a discussion. It is sufficient that with this bizarre answer of yours, you have departed from the consensus of the entire Islamic religion. By Allah, there is no meaning on the face of the earth for disgusting bigotry if it is not what you people have” (al-Lamadhhabiyya (b01), 99–108).

Buti concludes the story by saying:

I do not know then, why these people don’t just let us be, to use our own “personal conviction” that someone ignorant of the rules of religion and the proofs for them must adhere to one of the mujtahid Imams, imitating him because of the latter’s being more aware than himself of the Book of Allah and sunna of His messenger. Whatever the mistake in this opinion in their view let it be given the general amnesty of “personal conviction.” like the example of him who turns his back to the qibla and is his prayer is valid, or him who kills a child and the killing is “ijtihad” and “medical treatment” (ibid. 108).

Shaykh Murabtal Haaj's Fatwa on Following One of the Four Accepted Madhhabs⁸¹

Issued by Shaykh Murabtal Haaj, Mauritania

Translated by Hamza Yusuf Hanson

In the name of Allah, the Merciful, the Compassionate.

Amongst the most important replies that I have given, is my reply concerning the one who has deviated to the point where he censures the importance of studying the branches [furu'] of jurisprudence, and we seek refuge in Allah from the deviation of such a wandering deviant. Would that he simply had claimed independent reasoning (ijtihad) for himself only, and Allah is his reckoner, but abandoned the call of Muslims to leave that which is incumbent upon them. In our reply to such a one, we make mention what the scholars of the methodological bases of Islamic jurisprudence (usuli'un) and the Imams of jurisprudence themselves have said about such a matter. As for my labeling him a deviant, it is only because he has desired to impose upon common people the precious rank of absolute independent reasoning [ijtihad], about which Muhammad an-Nabigha said,

And ijtihad in the land of the Moroccans,
The western phoenix has taken to flight with it.

I say in reply, that the following of qualified scholarship (taqlid) is an obligation on anyone other than an absolute mujtahid. I shall make mention of all his prerequisites if Allah wills. [Sidi Abdullah Ould Hajj Ibrahim] has said in his Maraqi as-Sa'ud:

“[taqlid] is necessary for other than the one who has achieved the rank of absolute ijtihad. Even if he is a limited [mujtahid] who is unable [to perform absoluteijtihad].”

Commenting on this line, [Sidi Abdullah] said in Nashru al-bunud,

“It means that taqlid is an obligation on anyone who is not an absolute mujtahid, even if he has achieved the limited rank of ijtihad muqayyad . . . [until he says], ‘And ask the people of the reminder, if you yourselves do not know.’”

By using the line of Muhammad an-Nabigha above, I am in no way claiming that all ijtihad has been severed in every land; how [could I say such a thing] when [Sidi Abdullah] says in Maraqi as-sa'ud:

“The earth will never be void of a mujtahid scholar until its very foundations shake.”

He also said,

“[Regarding] the necessity of binding to a specific madhhab, the [scholars] have mentioned its obligation upon anyone falling short [of the conditions of ijtihad].”

He says in Nashru al-bunud,

“It means that it is incumbent for whoever falls short of achieving the rank of absolute ijtihad to follow a particular madhhab.”

81 Taken from <http://masud.co.uk/shaykh-murabtal-haajs-fatwa-on-following-one-of-the-four-accepted-madhhab/>

Again, in Maraḳi as-Sa'ud, Sidi Abdullah says,

“The consensus today is on the four, and all have prohibited following [any] others.”

He says in Nashru al-bunud,

“This means that the consensus of the scholars today is on the four schools of thought, and I mean by the schools of Malik, Abu Hanifa, Shafi'i and Ahmad. Indeed, all of the scholars have prohibited following any other school of an independent and absolute mujtahid since the eighth century when the school of Dawud adh-Dhahiri died out and until the 12th Century and all subsequent ones.”

In the chapter concerning inferential reasoning, from Maraḳi as-sa'ud, [Sidi Abdullah] says,

“As for the one who is not a mujtahid, then basing his actions on primary textual evidence [Qur'an and hadith] is not permissible.”

He says in Nashru al-bunud,

“It means that it is prohibited for other than a mujtahid to base his actions upon a direct text from either the Book or the Sunna even if its transmission was sound because of the sheer likelihood of there being other considerations such as abrogation, limitations, specificity to certain situations, and other such matters that none but the mujtahid fully comprehends with precision. Thus, nothing can save him from Allah the Exalted excepted following a mujtahid. Imam al-Qarafi⁸² says,

‘And beware of doing what some students do when they reason directly from the hadith, and yet they don't know their soundness, let alone what has been mentioned [by the Imams] concerning the subtleties involved in them; by doing this, they went astray and led others astray. And whoever interprets a verse or hadith in a manner that deviates from its intended meaning without proof [dalil] is a kafir.’”

As for the conditions of the absolute and independent ijtihad, they are mentioned in the Maraḳi as-sa'ud in the following line and what follows:

“And that [word ‘faqih’]⁸³ is synonymous with the [word] ‘mujtahid’ coupled with those things which bear upon [him] the burden of responsibility,

Such as his being of extreme intelligence by nature, and there is some debate about one who is known to reject juristic analogy [qiyas]

He knows the [juristic] responsibilities through intellectual proofs unless a clear transmitted proof indicates otherwise.

82 Ahmad ibn Idris Shihabudin as-Sanhaji al-Qarafi al-Maliki was born in Egypt in the seventh Century, and died there in the year 684. He was one of the greatest Maliki scholars who ever lived and is especially known for his work in methodology and law (usul al-fiqh). He was a master of the Arabic language and has remarkable works in grammar. His book adh-Dhakhira is a magisterial 14 volume work recently published in the Emirates, that looks at Maliki fiqh with proofs from usuli sources. He is buried in Qarafi in Egypt near Imam as-Shafi'i. May Allah have mercy on them both.

83 Sidi Abdullah says in his commentary on this line that the faqih is synonymous with mujtahid in the science of usul. There are different types of faqih. A faqih according to the scholars of usul is anyone who has achieved the rank of ijtihad. According to the scholars of furu'u, a faqih is anyone who has reached the level of knowledge in which he can give valid juristic opinion. This latter definition is important considering endowments that are given to fuqaha. See Nashur al-bunud `ala maraḳi as-sa'ud, kitab al-ijtihad fi al-furu'u (1409 Hijrah. Beirut: Maktabat al-Kutub. p.309)

[Sidi Abdullah] says [in his commentary] Nashru al-bunud,

“This means that among the conditions of ijtiḥād is that [the mujtahid] knows that he must adhere to the intellectual proof which is the foundational condition [al-barāʾatu al-asliyya]⁸⁴ until a transmitted proof from a sacred law indicates otherwise.”

He then goes on to mention the other conditions of a mujtahid:

[The sciences of] grammar, prosody, philology, combined with those of *usul* and rhetoric he must master.

According to the people of precision, [he must know] where the judgements can be found without the condition of having memorized the actual texts.

[All of the above must be known] according to a middle ranked mastery at least. He must also know those matters upon which there is consensus.

[Moreover, he must know] things such as the condition of single *ḥadīths* and what carries the authority of great numbers of transmissions; also [knowledge of] what is sound and what is weak is necessary.

Furthermore, what has been abrogated and what abrogates, as well as the conditions under which a verse was revealed or a *ḥadīth* was transmitted is a condition that must be met.

The states of the narrators and the companions [must also be known]. Therefore, you may follow anyone who fulfils these conditions mentioned above according to the soundest opinion.

So, consider all of the above-mentioned, and may Allah have mercy upon you, and [may you] see for yourself whether your companion is characterized by such qualities and fulfils these conditions—and I highly doubt it. More likely, he is just pointing people to himself in his demands that the people of this age take their judgements directly from the Book and Sunna. If, on the other hand, he does not possess the necessary conditions, then further discussion is useless.

In Muhammad ‘Illish’s, *Fath al-‘Alī al-Malik*, there are many strong rebukes for those who wish to force people to abandon the study of the judicial branches and take directly from the Book and the Sunna. The actual text of the question put to him is as follows:

“What do you say about someone who was following one of the four Imams, may Allah the Exalted be pleased with them, and then left claiming that he could derive his judgements directly from the Qur’an and the soundly transmitted *ḥadīths*, thus leaving the books of jurisprudence and inclining towards the view of Ahmad bin Idris? Moreover, he says to the one who clings to the speech of the Imams and their followers, “I say to you ‘Allah and His Messenger say’, and you reply ‘Malik said’ and ‘Ibn al-Qasim said’ or ‘Khalil said.’”

To this, Imam ‘Illish replies:

“My answer to this all this is as follows: Praise be to Allah, and Prayer and Safety be upon our Master Muhammad, the Messenger of Allah. It is not permissible for a common person to abandon following the four Imams and take directly from the textual sources of the Qur’an and the *ḥadīths* for the simple reason that this entails

⁸⁴ The foundational condition is that a human being is not asked by Allah to do anything other than those things which have a firm proof through the transmission of the prophets, peace be upon them, and that the human being is only accountable for those things in which there is clear responsibility. All other matters are considered permissible because of the lack of a proof indicating their impermissibility.

a great many conditions that have been clarified in the books of *usul*. Moreover, these conditions are rarely met by the great scholars, especially in these last days in which Islam has become a stranger just as it began a stranger.”

Ibn ‘Uyyana, may Allah be pleased with him, has said,

“The hadiths are a source of error except for the jurists.”

What he means is that people, other than the scholars, might interpret a tradition based on an apparent meaning, and yet [the hadith may] have another interpretation based on some other hadith that clarifies the meaning or some proof that remains hidden [to the common people]. After a long discussion, he remarks,

“That as for their saying, ‘How can you leave clear Qur’anic verses and sound hadiths and follow the Imams in their *ijtihad*s, which have a clear probability of error,’”

His answer to them is as follows:

“Surely the following of our [rightly guided] Imams is not abandoning the Qur’anic verses or the sound hadiths; it is the very essence of adhering to them and taking our judgements from them. This is because the Qur’an has not come down to us except by means of these very Imams [who are more worthy of following] by virtue of being more knowledgeable than us in [the sciences of] the abrogating and abrogated, the absolute and the conditional, the equivocal and the clarifying, the probabilistic and the plain, the circumstances surrounding revelation and their various meanings, as well as their possible interpretations and various linguistic and philological considerations, [not to mention] the various other ancillary sciences [involved in understanding the Qur’an] needed.

“Also, they took all of that from the students of the companions (*tabi’in*) who received their instruction from the companions themselves, who received their instructions from the Lawgiver himself, may Allah bless him and grant him peace, divinely protected from every mistake, who bore witness that the first three generations of Muslims would be ones of virtue and righteousness. Furthermore, the prophetic traditions have also reached us through their means given that they were also more knowledgeable than us through their means given that they were also more knowledgeable than those who came after them concerning the rigorously authenticated (*sahih*), the well authenticated (*hasan*), and the weak (*da’if*) channels of transmission, as well as the *marfu’u*⁸⁵, *mursal*⁸⁶, *mutawatir*⁸⁷, *ahad*⁸⁸, *mu’dal*⁸⁹ and *gharib*⁹⁰ transmissions.

“Thus, as far as this little band of men is concerned, there is only one of two possibilities: either they are attributing ignorance to Imams whose knowledge is considered by consensus to have reached human perfection as witnessed in several traditions of the truthful Lawgiver, upon him be prayers and peace, or they are actually attributing misguidance and lack of *din* to Imams who are all from the best of generations by the testimony of the magnificent Messenger himself, may Allah bless him and grant him peace. Surely, it is not the eyes that are blind, but blind are the hearts in our breasts.

As for their saying to the one who imitates Malik, for example, “We say to you ‘Allah says’ or ‘the Messenger of

85 The transmission (*sanad*) goes to the Prophet (Allah bless him and give him peace) the hadith came from the Prophet (Allah bless him and give him peace).

86 A *tabi’i* related it from the Prophet (Allah bless him and give him peace); a companion (*sahabah*) is missing from the line of the transmission.

87 The hadith comes from so many sources that it is an absolute proof.

88 A hadith, that at some point in the line of transmission, has only one narrator.

89 Two people in a row are missing in the chain of narrators.

90 The narrator of the hadith is trustworthy, but no one else related the hadith.

Allah, may Allah bless him and grant him peace, says' and you reply, 'Malik says,' or 'Ibn al-Qasim says,' or 'Khalil says,' for example," our response is that the follower who says, "Malik says . . . etc.," means that, "Malik says based on his deep understanding of the Word of Allah, or of the words of the Messenger, or of those firmly adhering to the actions of the companions, or of the tabi'in who understood clearly the Word of Allah and the word of the Messenger of Allah or took their example from the actions of His Messenger." And the meaning of [a follower] saying "Ibn al-Qasim said . . ." is that he has [faithfully] transmitted what Malik said based on his understanding of the Word of Allah or of what Ibn al-Qasim himself understood from the word of Allah the Most Exalted. And the meaning of him saying, "Khalil said . . .", for example, is that he is transmitting only from those [Imams] aforementioned. As for Malik and Ibn al-Qasim, they are both Imams whose spiritual and judicial authority is agreed upon by unanimous consensus of this Umma; and they are both from the best of generations.

As for the one who leaves their leadership and says, "Allah said and His Messenger said . . .," he has relied solely on his own understanding despite the fact that he is incapable of having any precision in the verses and hadiths that he quotes since he is unable even to provide chains of transmission [with any authority], let alone that he lacks knowledge concerning the abrogated, the absolute and the conditional, the ambiguous and the clarifying, the apparent and the textual, the general and the specific, the dimensions of the Arabic and the cause for revelation, the various linguistic considerations, and other various ancillary sciences needed. So, consider for yourself which is preferable: the word of a follower who simply quotes the understanding of Malik, an Imam by consensus—or the word of this ignoramus who said "Allah said and His Messenger said . . ." But it is not the sight that goes blind, but rather the hearts in our breasts.

Furthermore, know that the origin of this deviation is from the Dhahiriyya⁹¹ who appeared in Andalusia [Muslim Spain] and whose power waxed from a period until Allah obliterated all traces of them until this little band of men set about to revive their beliefs. Imam al-Barzuli said, "The first one ever to attack the Mudawwana⁹² was Sa'id bin al-Haddad."

If you consider carefully the above-mentioned texts, you will realize that the one who censures you from following [the Imams] is truly a deviant. And I am using the word "deviant" to describe them only because the scholars [before me] have labelled this little band and their view (madhhab) as deviant. Moreover, you should know that those who condemn your adherence to the Imams have been fully refuted by Muhammad al-Khadir bin Mayyaba with the most piercing of refutations, and he himself called them, in his book, "the people of deviation and heterodoxy." He called his book, Refuting the people of deviation of heterodoxy who attack the following [taqlid] of the Imams of independent reasoning, and I used to have a copy but no longer do. So, my brother, I seriously warn you from following the madhhab of these people and even from sitting in their company, unless there is an absolute necessity, and certainly from listening to anything they have to say, because the scholars have declared their ideas deviant. Ibn al-Hajj says in his book, al-Madkhal,

"Umar ibn al-'Aziz said, 'Never give one whose heart is deviant access to your two ears, for surely you never know what may find fixity in you.'"

I ask Allah to make you and me from those who listen to matters and follow the best of them.

91 The Dhahiriyya followed Daw'ud ad-Dhahiri's madhhab.

92 Mudawwana: Imam Malik's work of fiqh.

Ikhtilaf (Differences) Among the Madhhabs in Islam⁹³

By Dr. G. F. Haddad

1. Al-Hafiz al-Bayhaqi in his book “al-Madkhal” and al-Zarkashi in his “Tadhkirah fi al-ahadith al-mushtaharah” relate: Imam al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq said: “The differences among the Companions of Muhammad (s) are a mercy for Allah’s servants. Al-Hafiz al-`Iraqi the teacher of Ibn Hajar al-`Asqalani said: “This is a saying of al-Qasim ibn Muhammad who said: “The difference of opinion among the Companions of Muhammad (s) is a mercy.
2. Al-Hafiz Ibn al-Athir in the introduction to his “Jami` al-usul fi ahadith al-rasul” relates the above saying from Imam Malik according to al-Hafiz Ibn al-Mulaqqin in his “Tuhfat al-muhtaj ila adillat al-Minhaj” and Ibn al-Subki in his “Tabaqat al-Shafi`iyya.”
3. Bayhaqi and Zarkashi also said: Qutada said: “Umar ibn `Abd al-`Aziz used to say: ‘It would not please me more if the Companions of Muhammad (s) did not differ among them, because had they not differed there would be no leeway (for us).”
4. Bayhaqi also relates in “al-Madkhal” and Zarkashi in the “Tadhkira”: Al-Layth ibn Sa`d said on the authority of Yahya ibn Sa`id: “the people of knowledge are the people of flexibility (tawsi`a). Those who give fatwas never cease to differ, and so this one permits something while that one forbids it, without one finding fault with the other when he knows of his position.”
5. Al-Hafiz al-Sakhawi said in his “Maqasid al-hasana” p. 49 #39 after quoting the above: “I have read the following written in my shaykh’s (al-Hafiz ibn Hajar) handwriting: ‘The hadith of Layth is a reference to a very famous hadith of the Prophet (s), cited by Ibn al-Hajib in the “Mukhtasar” in the section on qiyas (analogy), which says: “Difference of opinion in my Community is a mercy for people” (ikhtilafu ummati rahmatun li al-nas). There is a lot of questioning about its authenticity, and many of the imams of learning have claimed that it has no basis (la asla lahu). However, al-Khattabi mentions it in the context of a digression in “Gharib al-hadith” . . . and what he says concerning the tracing of the hadith is not free from imperfection, but he makes it known that it does have a basis in his opinion.”
6. Al-`Iraqi mentions all of the above (1-5) in his “Mughni `an haml al-asfar” and says: “What is meant by “the Community” in this saying is those competent for practicing legal reasoning (al-mujtahidun) in the branches of the law, wherein reasoning is permissible.”

NOTE: What `Iraqi meant by saying “the branches wherein reasoning is permissible” is that difference is not allowed in matters of doctrine, since there is agreement that there is only one truth in the essentials of belief and anyone, whether a mujtahid or otherwise, who takes a different view automatically renounces Islam. (Shawkani, “Irshad al-Fuhul” p. 259 as quoted in Kamali, “Principles of Islamic Jurisprudence” p. 383.) Al-Albani in his attack on the hadith “Difference of opinion in my Community is a mercy” ignores this distinction and even adduces the verse: “If it had been from other than Allah they would have found therein much discrepancy” (4:82) in order to prove that differences can never be a mercy in any case but are always a curse. Al-Albani’s point is directed entirely against those who are content to follow a madhhab. The only scholar he quotes in support of his position is Ibn Hazm al-Zahiri, whose mistake he adopts without mentioning it was denounced by Nawawi. (“Silsila da`ifa” 1:76 #57)

7. Ibn Hazm said in “al-Ihkam fi usul al-ahkam” (5:64): “The saying “Difference of opinion in my Community is a mercy” is the most perverse saying possible, because if difference were mercy, agreement would be anger, and it is impossible for a Muslim to say this, because there can only be either agreement, or difference, and there can only be either mercy, or anger.” However, Imam Nawawi said in his Commentary on “Sahih

Muslim: “If something (i.e. agreement) is a mercy it is not necessary for its opposite to be the opposite of mercy. No-one makes this binding, and no-one even says this except an ignoramus or one who affects ignorance. Allah the Exalted said: “And of His mercy He has made night for you so that you would rest in it,” and He has named night a mercy: it does not necessarily ensue from this that the day is a punishment.”

8. Al-Khattabi said in “Gharib al-hadith”: “Difference of opinion in religion is of three kinds: – In affirming the Creator and His Oneness: to deny it is kufr (disbelief); – In His attributes and will: to deny them is innovation; – In the different rulings of the branches of the law (ahkam al-furu’): Allah has made them mercy and generosity for the scholars, and that is the meaning of the hadith: “Difference of opinion in my Community is a mercy.” Al-Jarrahi cited it in “Kashf al-khafa” 1:64 #153.
9. Al-Hafiz al-Suyuti says in his short treatise “Jazil al-mawahib fi ikhtilaf al-madhahib” (The Abundant Grants Concerning the Differences Among the Schools): “The hadith “Difference of opinion in my Community is a mercy for people” has many benefits among which are the fact that the Prophet (s) foretold of the differences that would arise after his time among the madhahib in the branches of the law, and this is one of his miracles because it is a foretelling of things unseen. Another benefit is his approval of these differences and his confirmation of them because he characterizes them as a mercy. Another benefit is that the legally responsible person can choose to follow whichever he likes among them.” After citing the saying of ‘Umar ibn ‘Abd al-‘Aziz already quoted (#3 above), Suyuti says: “This indicates that what is meant is their differences in the rulings in the branches of the law.”
10. The muhaddith al-Samhudi relates al-Hafiz Ibn al-Salah’s discussion of Imam Malik’s saying concerning difference of opinion among the Companions: “Among them is the one that is wrong and the one that is right: therefore you must exercise ijtihad.” Samhudi said: “Plainly, it refers to differences in legal rulings (ahkam). Ibn al-Salah said: “This is different from what Layth said concerning the flexibility allowed for the Community, since this applies exclusively to the mujtahid as he said: “you must exercise ijtihad,” because the mujtahid’s competence makes him legally responsible (mukallaf) to exercise ijtihad and there is no flexibility allowed for him over the matter of their difference. The flexibility applies exclusively to the unqualified follower (muqallid). The people meant in the saying: “Difference of opinion in my Community is a mercy for people” are those unqualified followers. As for the import of Malik’s saying “Among the Companions is the one that is wrong and the one that is right,” it is meant only as an answer to those who say that the mujtahid is able to follow the Companions. It is not meant for others.”
11. The author of “al-Fiqh al-Akbar” (attributed to Imam Abu Hanifa) said: “Difference of opinion in the Community is a token of divine mercy.”
12. Ibn Qudama al-Hanbali said in “Al-‘Aqa’id”: “The difference in opinion in the Community is a mercy, and their agreement is a proof.”

Discussion

The decision of ‘Umar whereby he gave precedence to ‘Ubayy ibn Ka’b’s ijtihad over the ijtihad of ‘Abdullah ibn Mas‘ud on the validity of praying in a single garment is not a proof that ‘Abdullah was wrong, rather it is a proof that ‘Umar exercised his own ijtihad and authority as the Greater Imam in settling the question. He overruled, not invalidated, and if Ibn Mas‘ud held his position from the Prophet (s) he cannot change it even after ‘Umar’s ruling. This is true of every true mujtahid at any time: he is obligated to follow the result of his own ijtihad even if it should differ with that of every other mujtahid of the past and present, unless he becomes convinced that he was mistaken in his previous ijtihad. According to all the scholars it is incumbent upon the leader of the Muslims to be a mujtahid and it is his responsibility in such cases to settle the question for the sake of the people of his time, and that is the proper context of Imam Malik’s injunction: “Exercise ijtihad.” It is addressed to the mufti who must establish what is correct in clearcut fashion, not to the muqallid (follower) who is only interested in “a way to follow” (= madhhab)

without having to verify its proofs and inferences. However, another mufti may reach another conclusion and be followed, and is not bound by that of the first, nor are those who take their fatwa from him, and no-one finds fault with the other, as Al-Layth ibn Sa`d stated.

A clear proof that the fatwa of the leader overrules but does not invalidate the opinion of the Companions even if it directly contradicts it, is the fact that when `Umar ibn al-Khattab proposed to have all the hadith collected and written down he consulted the Companions and they unanimously agreed to his proposal; later he disapproved of it and ordered that everyone who had written a collection burn it. Yet `Umar ibn `Abd al-`Aziz later ordered that hadith be collected and written. Al-Hafiz al-Baghdadi relates it in his “Taqyid al-`ilm” 49, 52-53, 105-106, and Ibn Sa`d in his “Tabaqat” 3(1):206, 8:353.

Those who think they are mujtahid but in reality are unqualified, when faced by the followers of madhahib, cover up their ignorance with the flashy claim: “We follow Qur’an and Sunna, not madhahib.” When it is pointed out to them that to follow a madhhab is to follow Qur’an and Sunna through true ijtiḥad, they become upset: “How can the four madhhabs differ and be right at the same time? I have heard that only one may be right, and the others wrong.” The answer is that one certainly follows only the ruling that he believes is right, but he can never fanatically invalidate the following of other rulings by other madhahib, because they, also, are based on sound principles of ijtiḥad. At this they rebel and begin numbering the mistakes of the mujtahids: “Imam Malik was right in this, but he was wrong in that; Imam Shafi`i was right in this, but he was wrong in that . . .” This is what they say, and what they hide in their heart is worse because it includes even the Companions. This we will never accept. But when they are rebuked for this blatant disrespect they make it known that they have been wronged and “They are arrogant in their sin” (2:206). This is nothing else than the legacy of the Wahhabi/Salafi movement.

Blessings and Peace on the Prophet, his Family, and His Companions. May Allah be well pleased with the Four Mujtahid Imams, and all the scholars who feared Allah truly.

What the Imams meant when they said: “If the Hadith is Authentic, it is My Way.”⁹⁴

By Dr. S. Kose

I have seen time and time again people taking this statement of the Imams out of context. Apparently, it was epidemic enough at the time of the eminent Hadith Master, Jurist, Shaykh al-Islam Muhyiddeen al-Nawawi al-Shafii (may Allah have mercy on his soul) that he addressed the question in the introduction of his masterpiece in 25 volumes called “Al-Majmoo’ ” which is worth its weight not in gold but in diamonds.

Al-Nawawi says (vol 1/105-106):

“It is true that Al-Shafii said ‘if you find in my book what goes against the saying of the Messenger of God (peace be upon him), leave my statement [aside] and give verdict according to the hadith’. Or he is reported to have said ‘If my statement contradicts an authentic hadith, leave my verdict and act upon the hadith’ or ‘If my statement contradicts an authentic hadith, then the hadith becomes my way.’”

Al-Nawawi continues: “This statement of Al-Shafii doesn’t mean that every Tom, Dick and Harry who comes across an authentic hadith can say this is the way of Al-Shafii and follows the literal meaning of the hadith. Al-Shafii was addressing those who reached a level of expertise whereby they are qualified to issue independent verdicts within the Shafii School (*mujtahid fi al-madhab*). The prerequisites of such an individual (*mujtahid*) have previously been listed. Once a qualified expert in the Shafii school (*mujtahid*) comes across a hadith that contradicts the statement of Al-Shafii, he must make sure that Al-Shafii never saw the particular hadith or that he wasn’t aware of its authenticity [before he can replace Al-Shafii’s verdict with the hadith]. How can someone fulfill the above condition unless and until he goes through the books of Al-Shafii, those of his students until he reads all the major books in Shafii School. Indeed this is a very tough condition and those who can fulfill this requirement are very few in number [among the specialists of the Shafii School let alone the ordinary people]. The reason for the above condition is that Al-Shafii did not act according to the literal meaning of many hadith that he saw and he knew. [The reason he did not act upon them] is because he had evidence that indicated a defect in the hadith, or the hadith was abrogated (*mansookh*), or the hadith was applicable to a very specific context (*takhsees*), or his information supported a particular interpretation (*ta’weel*) of the hadith and the like...”

May Allah encircle Al-Nawawi in his mercy for he has done a beautiful job of responding to the question. So, if one must go through the major books of a *madhab* (in addition to being a qualified scholar) before applying the above statement of the Imams, let us see what that would mean. I am going to list **some** of the major books of Hanafi school here but rest assured that the other three *madhabs* have just as many books.

Qur’anic Commentaries⁹⁵ specifically elaborating on rulings derived from Qur’an:

1. *Ahkam al-Qur’an* by Abu al-Hasan ‘Ali ibn Musa ibn Yazdad al-Qummi al-Hanafi (d. 305 H)

94 Taken from the booklet called “Do Salafis Really Follow the Daleel” (<https://archive.org/details/DoSalafisFollowDaleel>)

95 There are many general Qur’anic commentaries written by Hanafi scholars. For example:

- *Ta’veelaat ahl al-Sunnah* by Abu Mansoor Al-Maturidi. Published in 10 Volumes. The author (may Allah have mercy on him) is one of the Imams of Ahl al-Sunnah wa al-Jamaah in *aqida* (creed) and hence his commentary is an excellent resource for *aqida*. He authored on the subject of creed a book called “*Kitaab al-Tawheed*” that is also published.
- *Al-Kashshaf* by Al-Zamakhshari. Published in 5 Large Volumes.
- *Tafsir al-Nasafi* by Imaam al-Nasafi. Published in 2 Large Volumes.
- *Tafseer al-Samarqandi* by Abu al-Layth al-Samarqandi. Published in 3 large volumes.
- *Tafseer Aby Suud* by Shaykh al-Islam Abu al-Suud Efendi. Published in 6 volumes.
- *Safwat al-Tafaseer* by Shaykh Muhammad ‘Ali al-Sabuni. Published in 3 volumes.

2. *Ahkam al-Qur'an* by Abu Ja'far Ahmad ibn Muhammad al-Tahawi al-Hanafi (d. 321 H)
3. *Ahkam al-Qur'an* by Imam Abu Bakr Ahmad ibn 'Ali popularly known as al-Jassas al-Razi al-Hanafi (d. 370 H). Published in **3 Volumes**.
4. *Talkhis Ahkam al-Qur'an* by Shaykh Jamal al-Din Mahmud ibn Ahmad popularly known as Ibn al-Siraj al-Qunawi al-Hanafi (d. 770 H)
5. *Al-Tafsirat al-Ahmadiyyah* by Shaykh Ahmad al-Jonpuri al-Hindi al-Hanafi popularly known as Mulla Jiwan (d. 1130 H)
6. *Ahkam al-Qur'an* by Maulana Zafar Ahmad al-USmani al-Tharvi and other Indian scholar under the guidance of Maulana Hakeem al-Ummah Ashraf Ali al-Tharvi. Published in **5 volumes**.
7. *Rawai' al-Bayan fi Tafsir Ayat al-Ahkam* by Shaykh Muhammad 'Ali al-Sabuni al-Hanafi (Allah Almighty preserve him).

Books of Jurisprudence (*fiqh*). The authors discuss at great lengths the proofs and methodology for each and every ruling. [**134 volumes**]:

1. *Al-Mabsoot* by Shams al-Aimma Abu Shalin al-Sarakhsi⁹⁶ (d. 490 H). Published in **30 Volumes**.
2. *Badai' al-Sanai' fi tarteeb al-Sharai'* by Malik al-Ulamaa Alauddeen al-Kasani (d. 587 H). Published in **10 Volumes**.
3. *Al-Hidaya Sharh bidayat al-Mubtadi'* by Shaykh al-Islam Burhanuddeen al-Marghinaani (d. 593 H). **5 Volumes** published as 2. This is already translated into English by Imran Ahsan Khan Nyazee in 2 volumes.
4. *Al-Ikhtiyaar li Taa'leel al-Mukhtaar* by Imam Abdullah al-Mawsili (d. 683 H). **5 Volumes** publishes as 2.
5. *Tabyeen al-Haqaaiq Sharh Kanz al-Daqaaiq* by Imaam Fakhruddeen al-Zaylai (d. 743 H). Published in **8 volumes**.
6. *Al-Binaya Sharh Al-Hidaya* by Al-Allama Al-Hafidz Al-Faqeeh Badruddeen al-Ayni (d. 855 H). Published in **13 volumes**.
7. *Fath al-Qadeer Sharh al-Hidaaya* by Al-Imaam al-Humaam al-Muhaqqiq Al-Faqeeh Al-Usooly Al-Kamaal bin Al-Humaam (d. 861 H). Published in **10 Volumes**.
8. *Al-Bahr al-Raa'iq Sharh Kanz al-Daqaaiq* by Al-Imaam Al-Usooly Ibn Nujaim Al-Hanafi (d.970 H). Published in **9 volumes**.
9. *Sharh al-Laknawi ala l-Hidaya* by Bahr al-Uloom al-Allama al-Muhaqqiq Al-Muhaddith Al-Faqeeh Abdulhaya Al-Laknawi (d.1304 H) Published in **8 volumes**.
10. *Radd al-Mukhtaar ala al-durr al-mukhtaar* by Al-Allama Khatimat al-Muhaqqiqeen Muhammed Emeen ibn Aabideen (d. 1253 H). Published in **14 volumes**.
11. *I'la al-Sunaan* by Maulana al-Allama al-Muhaddith al-Faqeeh al-Muhaqqiq Zafar Ahmad al-USmani al-Tharvi (d. 1394 H). Published in **22 volumes**.

Here is a partial list of commentaries on the hadith collections written by the Hanafi scholars. These are the books you would go to if you want to know what the Hanafi point of view is for a given Hadith of the Prophet (God bless him and grant him peace) [**110 volumes**]:

1. *Umdat al-Qaari Sharh Saheeh al-Bukhari* by Al-Allama Al-Hafidz Al-Faqeeh Badruddeen al-Ayni (d. 855 H). Published in **25 volumes**.
2. *Ftah al-Mulhim Sharh Saheeh Muslim* by Allama Shabbir Usmani (1369 H) and Muhammad Taqi Usmani (hafidzahullah). Published in **12+6 volumes**.
3. *Awjaz al-Masalik Ila Muwatta Malik* by Shaikhul Hadith Maulana Muhammad Zakariyyah Kandhalvi (d. 1982 M). Published in **16 volumes**.
4. *Sharh Sunan Abi Daawood* by Al-Allama Al-Hafidz Al-Faqeeh Badruddeen al-Ayni (d. 855 H). Published in **7 volumes**.

96 Imam al-Sarakhsi is known as Shams al-Aimma (the star of the scholars). This is a lofty title indeed but when you find out that he dictated the entire 30 volumes while in prison to his students just outside the prison totally from memory without any reference books, you say Glory be to Him Who bestowed upon our scholars these tremendous abilities to preserve for us our religion. May Allah encircle Imam Al-Sarakhsi and other scholars with His mercy. Ameen!

5. *Awn al-Maabud Sharh Sunan Abi Dawood* by Allam Sharaf al-Haqq al-Adzeemabadi (d. 1329 H) Published in **15 volumes**.
6. *Al-`Urf al Shadhi Sharh Sunan Al-Tirmidhi* by al-Allam Al-Muhaddith al-Faqeeh Anwar Shah al-Kashmiri (d. 1933 H). Published in **5 volumes**.
7. *Sarh Sunan Ibn Maja* by Al-Hafidz Abdullah Alauddeen Moghultay al-Hanafi (d. 762 H). Published in **5 volumes**.
8. *Mirqaat al-Mafaatih Sharh Mishkaat al-Masabih* by Al-Allama Mulla Ali Al-Qari (d. 1014 H). Published in **12 volumes**.
9. *Maarif al-Sunaan Sharh Sunaan al-Tirmidhi* by Muhammed Yusuf bin al-Husayn al-Bannuri al-Hindi (d. 1397 H). Published in **6 volumes**.
10. *Injah al-Haja Sharh Sunan Ibn Maja* by Muhammad Abdulghani Al-Mujaddidi al-Dahlawi (d. 1273 H). Published in **one large volume**.
11. *Al-Taaliq al-Mumajjad ala Muwatta Muhammaed* by Bahr al-Uloom al-Allama al-Muhaqqiq Al-Muhaddith Al-Faqeeh Abdulhady Al-Laknawi (d.1304 H) Published in **3 volumes**.

Books dedicated to the Analysis of the authenticity of hadith used in Hanafi texts [**9 volumes**]:

1. *Nasb al-Raya takhrij ahadith al-Hidaya* by Al-Hafidz Jamaluddeen al-Zaylai (d. 762 H). Published in **5 volumes** with an introduction by Al-Allama Al-Faqeeh Al-Muhaddith Al-Usuli Al-Naqid Sayfuallah al-Maslool al-Imaam Muhammed Zahid al-Kawtahri.
2. *Al-Ta'reef wa al-Ikhbaar bi Takhreej ahadith al-Ikhtiyar* by Al-Hafidz Qasim bin Qutlubogha Al-Hanafi (d. 879 H). Published in **one volume**.
3. *Takhreej ahadith Usool al-Bazdawi* by Al-Hafidz Qasim bin Qutlubogha Al-Hanafi (d. 879 H). Published in **one volume**.
4. *Takhrij ahadith al-Kashshaaf* by Al-Hafidz Jamaluddeen al-Zaylai (d. 762 H). Published in **2 volumes**.

Books that list the verdicts without the proofs [**9 volumes**]:

1. *Al-Fatawa al Hindiyya (aka Al-Fatawa al-Alemgeeriyya)* by a committee of Indian scholars under the leadership of al-Shaykh Nidzaam. Published in **6 volumes**.
2. *Fatawa Qadikhan* by Fakhruddeen Hasan bin Ali Al-Ozjandi al-Farqhani. Published in **3 volumes**.

What I have just listed is 250+ volumes of the Hanafi books. A Salafi, who is faithful to the principle of Shaykh Al-Albani⁹⁷, would have to page through 1000+ volumes (assuming at least 250+ volumes per *madhab*) plus sort through a quarter of a million hadith spread across 300+ books⁹⁸ and then come to a conclusion. Inevitably, he will run into multiple ahadith whose apparent meaning might not be aligned in a given subject. In this case, one has to follow the steps of choosing one hadith over another. This point is treated by Al-Hafidz al-Iraqi in his commentary on the *Muqddima* of *Ibn Al-Salah* under the title *Al-Murajjihaat*⁹⁹. He states on page 245 that there are 110 steps in deciding between two hadith if the reconciliation is not possible. He (may Allah have mercy on him) takes the trouble and lists all 110 steps one after another taking five pages. For the promoters of the anti-madhabism, the first step is to see if one hadith is in Bukhari or Muslim and the other is not. We want to know what this giant of Hadith Science Al-Hafidz al-Iraqi has to say about this. He says:

الثاني بعد المنة: كون احدهما اتفق عليه الشيخان

Step Number 102: One of the two hadith is narrated by Bukhari **and** Muslim (*muttafaq alayhi*).

You can already see that the anti-madhabists put the cart in front of the horse. Instead of going through all the steps, they take a shortcut and jump to step 102 ignoring all the steps before and after¹⁰⁰. If you take the trouble

⁹⁷ Shaykh Al-Albani said during the discussion with Dr. Buti: "I examine the positions of the Imams and their evidences for them, and then take the closest of them to the evidence of the Qur'an and Sunnah."

⁹⁸ Musnad of Imaam Ahmad alone has about 40 thousand hadith.

⁹⁹ Steps for choosing one hadith over another.

¹⁰⁰ Al-Hafidz Al-Iraqi (may Allah have mercy on him) says that the steps are listed in order of priority (ala

to read the steps¹⁰¹ that Al-Hafidz al-Iraqi (may Allah have mercy on him) listed, you will quickly realize that in al-wala). This is confirmed by Al-Shaykh Al-Allama Al-Muhaqqiq Al-Faqeeh Al-Muhaddith Abdulfattah Abu Ghudda in his lecture on youtube called *حاجة الأمة إلى الفقهاء والأئمة*. He (may Allah have mercy on him) said explicitly not to make step number 102 into step number 1. You can listen the lecture [here](#) (starting from 24:30).

101 Here are most of the steps listed by Al-Hafidz Al-Iraqi. I highly recommend that you read these steps at least once to have an appreciation for the tremendous effort it takes to decide between the two hadith if one follows the way of the great scholars of this Umma. **[Caution: I am including some of these steps just for information. They are not intended to serve as a guide for anyone to decide between the two hadith. This task is reserved for Hadith Experts and Jurists].**

1. Number of chains (*kathrat al-ruwah*).
2. Narrator of one of the hadith has more expertise (*atqan*) and greater mastery of hadith (*ahfadz*).
3. The trustworthiness of the narrators of one of the hadith is agreed upon.
4. That the narrator was an adult at the time he received the hadith.
5. One of them received the hadith through *tahdith* (audition of the narration of the teacher) and the other through *ard* (presentation or reciting the hadith in the presence of the teacher).
6. One of them received the hadith through *sema'an* (audition) or *ardan* (presentation) and the other through *kitabatan* (writing), *munawalatan* (having an explicit or metaphoric license for the narration from the teacher) *wijadatan* (narrating from a book without hearing from a teacher or having received a license).
7. The narrator is relating from the original source.
8. The narrator is relating that which involves himself.
9. ..
10. The narrator is closer to the Prophet (pbuh) at time of reception of the hadith.
11. The narrator shadowed his teacher more.
12. The narrator heard the hadith from the scholars of his own country or locality.
13. One of the hadith has been analyzed by many (*kawni ahad al-hadithayni lahu makhaarij*)
14. One of the hadith has a *Hijazi* chain (i.e., narrators are from *Hijaz*).
15. Narrators of the hadith are from a school (or locality) that don't tolerate misrepresentation (*tadlees*).
16. The hadith is narrated with keywords that indicated that chain is intact such as "I heard (*sami'tu*)" or "he transmitted to us (*haddathana*)".
17. That the narrator took the hadith from his teacher in person while seeing him.
18. That there is no disagreement regarding the hadith.
19. That the narrators did not interpolate anything in to the text.
20. There is unanimous agreement that the hadith is raised (*muttafaq ala rafi'hi*).
21. There is unanimous agreement that the chain is intact (*muttafaq ala ittisalihi*).
22. That the narrators of the hadith do not permit narration by meaning.
23. That the narrator is a jurist (*faqeeh*).
24. That the narrator is an author of an oft-referred reference book [in Hadith].
25. One of the hadith pertain to the subject at hand directly and literally (*nassan wa qawlan*) while the other hadith requires analysis and derivation (*istidlalan wa ijtihtadan*).
26. That the hadith contains statement accompanied by action or practice.
27. That the hadith is in agreement with the evident meaning of the Qur'an.
28. That the hadith is in agreement with the other established prophetic traditions.
29. That the hadith is in agreement with legal analogy (*qiyas*).
30. That the hadith is supported by other loose (*mursal*) or interrupted (*munqati'*) hadith.
31. That the four rightly guided Caliphs (ra) acted upon the hadith.
32. That the Muslim nation (*ummah*) as a whole acts upon it.
33. The ruling contained in the hadith is explicitly expressed (*mantooq*).
34. The text of the hadith is self-explanatory (*mustaqillan*) and there is no need to estimate an omission (*idmaar*).
35. The ruling of one hadith is linked (*maqroonan*) to (bi) an adjective (*sifatin*) and the other with the noun (*al-ism*).
36. The [ruling found in the] hadith is linked (or narrated) with the interpretation of the narrator.
37. One hadith contains the ruling as a statement (*qawlan*) and the other as a practice (*fi'lan*). The former is preferred.
38. There is no room for specialization (*lam yadkhulhu al-takhsees*).
39. That the hadith does not contain any sign of offence for the Companions (ra).
40. [The ruling of] one hadith is absolute (*mutlaq*) and the other is linked to a reason (*sabab*).
41. In one case derived word is used but not the other (*kawn al-ishtiqaaq yadullu alayhi doon al-aakhar*).

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42. One of the two disputants [of the story contained in the narration] is relating the story.
 43. One of the hadith contains additional information (*ziyada*).
 44. ...
 45. One of the hadith has a similar narration whose ruling is agreed upon.
 46. One of them indicate prohibition (*tahreem*) the other permissibility (*ibaaha*).
 47. One of the results in a ruling that is in accordance with the secret law and this is preferred over the second one but some said they are equal.
 48. ..
 49. ..
 50. The two hadith are regarding judgment (*aqdiyyah*) and one of them is narrated by Ali (ra) or regarding inheritance (*faraaid*) and one of them is narrated by Zayd (ra) or regarding the permissible and prohibited (*halaal* and *haram*) and one of them was narrated by Muadh (ra) and so on. The correct way of selecting, that is adapted by most, is this.
 51. One of them has shorter chain (*a'ala sanadan*).
 52. Narrator is knowledgeable in Arabic (*aliman bi al-arabiyya*).
 53. Narrator is a linguist (*aliman bi al-lugha*).
 54. Narrator is better in jurisprudence (*fiqh*), Arabic (*arabiyya*) or language (*lugha*),
 55. Narrator has the correct creed (*hasan al-I'tiqaad*).
 56. Narrator is highly God-conscience (*wari'an*).
 57. Narrator frequented the Hadith scholars in particular and Islamic scholars in general.
 58. One frequented more (*akthar majalisatan lahum*).
 59. The trustworthiness of one is known through practical experience and the other through a testimonial or through examinations of his narrations.
 60. One has testimonial from someone who not only relates his narration but also puts in practice while the other gives testimony but only relates it without practicing it.
 61. One has a testimonial of trustworthiness with supporting evidence.
 62. The narrator is a male.
 63. The narrator is not a slave.
 64. The fame of the narrator (*shohrat al-raawi*).
 65. The fame of the lineage of the narrator.
 66. That there is no confusion regarding the narrator's name.
 67. The narrator with a single name is preferred over the one with two or more names.
 68. The narrators has more praises (or testimonials in his favor).
 69. The narrator is praised by many experts.
 70. The narrator had a good memory until the end of his life and mix-up (*ikhtilaat*) has not been reported about him.
 71. The companion who is narrating the hadith accepted Islam late. Some said it is the opposite. Al-Amidi settled for the latter.
 72. The narrator is one of the senior companions.
 73. If the ruling contained in the hadith is specific (*khass*), it [is preferred that the hadith] is narrated with context and background, if it is a general ruling, it [is preferred that the hadith] is narrated without a context or background.
 74. The narration makes explicit mention of the Messenger (pbuh).
 75. ...
 76. The narrator is well aware of the lofty status of the Messenger of Allah (pbuh).
 77. One of the narrators is from Medina the other is from Mecca.
 78. ..
 79. ..
 80. ..
 81. ..
 82. One of the hadith is eloquent (*faseeh*) and the other is not.
 83. ..
 84. The wording is explicit (*haqiqi*).
 85. The wording is metaphorical (*shibhu haqiqi*).
 86. One of them is Islamic reality and the other is the customary reality or linguistic reality.
 87. One of them contains customary reality the other is linguistic reality.
 88. One can derive the ruling from the hadith in two different ways.
 89. One can derive the ruling directly.
 90. Points to the reason behind the ruling.
 91. ..

order to go through them, one has to scan hundreds of volumes of biographies (*al-taraajim*) of which almost none is available in any language other than Arabic and some of these books are not printed but handwritten and copies are preserved in the libraries of centers of learning around the world such as Mecca, Medina, Istanbul, Cairo, Damascus, Laknaw etc. Common Muslims will not have access to some of these books anytime soon. In other words, this is a tremendous undertaking.

Do you wonder anymore why Salafis themselves don't live up to the standard that they set up for others? This is an impossible task for a full blown scholar let alone a young graduate of a four year college or an ordinary Muslim.

From the time of the birth of the *madhabs* around the second century until now, an overwhelming majority of the Umma (Muslim nation) has been following them. In fact, for hundreds of years, there was not a single Scholar worth the name except that he belonged to one of the *madhabs* including Al-Shaykh Ibn Taymiyya and his most famous student Ibn Al-Qayyim who were both followers of the Hanbali school.

Our Salafi brothers are free to follow whatever way or methodology they like. We just wish that they would leave the *madhab* followers alone at the time the Umma is in dire need of unity. The enemies of Islam have already enough tools that they use to divide us. Let us not, for the sake of Allah, be of those who cause division in the name of Islam.

We must recognize the tremendous effort exhorted by the Imams and their followers to sort through all the evidences and boil the information down for us into a set of simple rules to follow. They deserve our supplication day and night. May Allah reward them with gardens under which rivers flow. Ameen!

All praise is due to Allah and may His peace and blessings be upon our master Muhammed, upon his family, his companions and upon those who follow in his footsteps until the day of judgment. Ameen!

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92. It contains a threat.
 93. [One of them contains] a stronger threat.
 94. One of the narrations is less likely to be misunderstood.
 95. ..
 96. ..
 97. The ruling is emphasized with repetition.
 98. One of them is direct (*mafhoom al-mawafaq*) the other is by insinuation (*mafhoom al-mukhalaf*).
 99. ..
 100. One is narrated by a chain and the other is quoted from a known book or vice versa.
 101. One of them is quoted from a known book and the other is a famous hadith (*mashoor*).
 102. One of the two hadith is narrated by Bukhari and Muslim (*muttafaq alayhi*).
 103. ..
 104. ..
 105. ..